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Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women

Combined initial and second periodic reports of States Parties

Switzerland*

* The present report is being issued without formal editing.

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Introduction

Switzerland ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997. In doing so it assumed, inter alia, an international obligation to report regularly to the United Nations Committee on the Elimination of All Forms of Discrimination against Women on progress made in Switzerland in the implementation of the Convention. Under the terms of the Convention, the initial report must be submitted within one year after the entry into force for the State concerned. Subsequent reports must be submitted every four years (and whenever the Committee so requests). The present report was drafted by the Federal Office for Gender Equality in collaboration with other relevant departments of the Confederation.

The Convention relates to areas within the competence of cantons and communes, which play an important role in Switzerland's federal system. The cantons have participated in the preparation of this report by replying to a detailed questionnaire and, later, to questions concerning a draft report. Likewise, the political parties, economic organizations and non-governmental organizations with a particular interest in gender equality or human rights issues were invited to state their views on the draft. Many organizations did so, and the additions suggested by them have, in part, been incorporated in the present report. The preparation of the report thus made it possible to deepen contacts with governmental and non-governmental actors - both men and women - in the field of equality, while also providing the basis for a constructive dialogue on the implementation of the Convention within Switzerland's population.

The present report on the implementation of the Convention in Switzerland presents a full panorama of issues in the field of equality that arise in Switzerland at the present time as well as of measures adopted by the Confederation, the cantons and the communes. In order to depict this panorama it was necessary to conduct very extensive consultations, which took a considerable amount of time. This largely explains the delay in the submission of the initial report, which was due as far back as 1998. For this reason, this document also includes the second periodic report.

In accordance with the provisions of the Convention and with the Committee's recommendations, the report follows the same system as that adopted in the Convention. It presents, article by article, the situation in Switzerland in areas relating to the Convention and describes the measures adopted by the authorities. Numerical data incorporated in the text are supplemented by an annex containing a selection of statistics pertaining to gender equality.

Articles 1 to 4 of the Convention – Equality of rights, prohibition of discrimination and gender equality in Switzerland's legal order: the principles

A. Survey of the basic legal provisions (art. 2 (a) and (b) of the Convention)

Article 8 of the new Federal Constitution

1. The new Federal Constitution of Switzerland[1] entered into force on 1 January 2000. It sets out to "update" the Federal Constitution of 1874 through the use of modern terms, the introduction of certain systematic improvements and the incorporation of principles developed on the basis of the Federal Supreme Court's extensive case law in the field of constitutional law.

- Article 8, paragraph 1 of the new Constitution (Cst) takes up the *principle of equality of rights* set forth in article 4, paragraph 1, of the old Constitution (oCst.), which expressly prohibited privileges based, *inter alia*, on aristocratic or geographical origin. It guarantees equality of treatment of human beings by all organs of the State, and applies to both the elaboration and the application of the law.

- Article 8, paragraph 2 Cst expressly prohibits discrimination, in particular on grounds of origin, race, sex, age, language, social position, lifestyle, religious, philosophical or political convictions, or because of a corporal or mental disability. Prior to the entry into force of the new Constitution, the prohibition of discrimination on grounds of sex was inferred from the equality between women and men set forth in article 4, paragraph 2 oCst., as well as from the general principles of equality set forth in article 4, paragraph 1 oCst.

- Article 8, paragraph 3 reproduces with little change the wording of article 4, paragraph 2 oCst., a provision that had been added to the 1874 Constitution in 1981. In its first sentence it spells out the principle of equality of rights by expressly providing that *men and women have equal rights*. The second sentence explicitly mandates the lawmaker to *ensure equality in law and in fact* in general, and cites those areas in which this appears particularly indicated (family, education and work).

General principle of equality before the law (art. 8, para.1, Cst.)

2. By virtue of article 8, para.1 Cst, all human beings are equal before the law. According to the formulation adopted by the Federal Supreme Court, the principle of equality requires that similar situations be treated in a similar manner and that different situations be treated in a different manner.[2] Differentiated treatment is therefore permissible when it is based on facts that can be qualified as different from the standpoint of constitutional law. Any differentiated treatment must be based on objective grounds that show for what reasons and to what extent the determining facts warrant a difference of treatment. Objective grounds that fall outside the context of the case may also justify inequality of treatment, provided that such

[1] RS (Systematic Compilation of Federal Laws) 101.

[2] See, for example, ATF (Federal Supreme Court rulings) 124 I 289; 122 II 113; 121 II 198; 118 Ia 1.

treatment is proportional and, in particular, that it can reasonably[3] be imposed upon the person to whose disadvantage it operates. Conversely, an objective justification is required where different facts give rise to identical treatment. Thus it follows from the principle of equality that differences in fact must give rise to treatment that is differentiated in law: in such cases, equality of legal treatment would constitute indirect discrimination.

3. What are the objective reasons that may justify, or even necessitate, differentiated treatment? The answers vary depending on the views prevalent at a given moment.[4] They are influenced by value judgements that may evolve over time, and depend on the dominant world view and on ideas about anthropology. In this sense there exists, from the systematic point of view, a narrow correlation between the principle of equality and art. 7 Cst, which, since 2000, explicitly calls for respect and protection of human dignity, applies to both sexes in equal measure, and is intended to offer the best conditions of life and possibilities of full development to all human beings.

4. The principle of equality leaves the lawmaker, in particular, with the choice between several ways of reaching possible solutions, so long as those solutions are accompanied by an objective justification.[5] According to the case law of the Federal Supreme Court, it also allows for *differences in regulations between the cantons*. The cantons may adopt different regulations within their sphere of competence, provided, however, that they do not contravene the federal principle of equality of rights. In this sense, equality in law relates solely to the sphere of competence of *one and the same* authority or *one and the same* territorial collective unit. Thus, the cantons have the full right to prescribe different conditions for admission to their respective universities.[6] There can be cantonal divergences in the interpretation of federal law provided that it leaves a corresponding margin of action to the cantons and that each specific cantonal interpretation is based on adequate objective grounds. The possibilities of appeal provided in federal law (in particular, appeals in administrative law) are there precisely in order to guarantee a uniform application of federal law and to prevent the arbitrary or discriminatory application thereof. Moreover, the right to equality of legal treatment beyond cantonal borders can be strengthened by specific constitutional guarantees (e.g. the constitutional right to equality between women and men set forth in art. 3, para.3 Cst, cf. para. 6 below) or by provisions of federal law (e.g. the Federal Act on Equality, cf. para. 15 ff below).[7]

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[3] For the Federal Supreme Court's practice regarding equality in law, cf. for example Jörg Paul Müller, Grundrechte in der Schweiz, 3rd edition, Berne 1999, p. 397 ff.

[4] ATF 122 I 343; 121 I 102; 121 I 49; 114 I 1.

[5] For a survey of the extensive case of the Federal Tribunal, see e.g. ATF 122 I 101; 121 I 49; 121 II 198; cf. also Jörg Paul Müller, Grundrechte in der Schweiz , 3rd edition, Berne 1999, p. 401 ff; Etienne Grisel, Egalité: les garanties de la Constitution fédérale du 19 avril 1999, Berne 2000.

[6] ATF 125 I 1276 ff; 125 I 173, in particular 179; see also 102 Ia 126, in particular 145.

[7] See, for example, René Rhinow / Heinrich Koller / Christina Kiss, Oeffentliches Prozessrecht und Justizverfassungsrecht des Bundes, Basel / etc. 1996; cf. also Jörg Paul Müller, Grundrechte der Schweiz, 3rd ed., Berne 1999, p. 403 ff.

Principle of non-discrimination (art. 8, para. 2 Cst)

5. Under article 8, paragraph 2 Cst, nobody shall suffer discrimination, particularly on grounds of origin, race, sex, age, language, social position, lifestyle, religious, philosophical or political convictions, or because of a corporal or mental disability. Before the prohibition of discrimination was expressly set forth in the new Federal Constitution, the Federal Supreme Court considered in its practice that the principle of non-discrimination with regard to women derived from the principle of "equality of rights between women and men". The Federal Supreme Court employed the concept of discrimination in its broad sense, which ultimately reduces it to the concept of inequality of treatment.[8] According to a recent decision of the Federal Supreme Court, a case of discrimination exists within the meaning of art.8, para. 2 Cst where a person suffers inequality of treatment solely on the ground that he or she belongs to a group that tends - historically or in present-day social reality – to be excluded, or is treated as an inferior person in any other manner. Thus, discrimination is a *qualified* category of inequality of treatment between persons in comparable situations that has the effect of disadvantaging a person by making him or her suffer treatment that can be qualified as humiliation or exclusion in so far as it is based on a differentiation criterion that relates to an essential element of that person's identity which it is difficult or impossible to eliminate. The prohibition of discrimination contained in Swiss constitutional law does not, however, absolutely rule out the possibility of reference to a non-permitted characteristic (such as origin, race, sex or language). In the fist instance, the fact of referring to a non-permitted characteristic only gives rise to a suspicion of illicit differentiation; therefore it is necessary, at a later stage, that any inequalities of treatment deriving therefrom be qualified.[9] Inequalities of treatment are permissible where they have a legitimate purpose and are proportional.[10]

The principle of gender equality (art. 9, para. 3, Cst)

Equality in law (art. 8, para. 3, 1st sentence, Cst)

6. Under article 8, paragraph 3, first sentence, Cst., men and women have equal rights. The provision thus enshrines the general principle of gender equality. This is a *constitutional right* that is directly applicable and actionable. It addresses itself to all authorities of the Confederation, cantons and communes that enact and apply the law.

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[8] See the Federal Council's "Message concerning a new Federal Constitution" of 20 November 1996, FF 1997 I 144.

[9] ATF 126 II 377, preambular paragraph E.6 and footnotes. See e.g. Jörg Paul Müller, Die Diskriminierungsverbote nach Artikel 8 Absatz 2 der neuen BV, in: Die neue Bundesverfassung: Konsequenzen für Praxis und Wissenschaft, Berne 2000, p. 110 ff; id., Grundrechte in der Schweiz, 3rd edition, Berne 1999, pp. 410 ff, 455 ff; Andreas Auer, Les mesures positives et l'article 4 alinéa 2 Cst., AJP/PJA 1993, No. 11, p. 1340 ff.

[10] On the concept of discrimination, see, in particular the second and third periodic reports of Switzerland to the Committee on the Elimination of Racial Discrimination (CERD) dated May 2000, para. 75 ff.

7. The principle of equality of men and women in law prohibits different treatment of persons by reason of their sex. Instances of differentiated treatment set forth in the Federal Constitution are not covered by this prohibition. The present Federal Constitution contains two laws that differentiate between women and men: article 59, paragraph 2 and article 61, paragraph 2, according to which military service and civil defence are voluntary for women and compulsory for men (see para. 175 ff below).

8. According to the case law of the Federal Supreme Court, men and women must, in principle, be treated equally in all fields, without taking into account social situations and representations; in other words, received ideas about gender roles are no longer decisive in law. The fact of belonging to a gender cannot be used as a criterion for differentiation in law. Making a difference between men and women is permissible only if equality of treatment is absolutely ruled out by biological or "functional" differences. The question of the extent to which "functional" differences can really justify inequalities of treatment remains obscure and the underlying principle itself is open to controversy; moreover, the "functional" differences criterion still does not play any concrete role in case law. In any event, the prohibition of unequal treatment does not apply in cases where a biological difference exercises a direct influence on the facts in question (e.g. in the field of protection of pregnancy and maternity).[11]

9. Whereas in its old case law the Federal Supreme Court attached great importance to formal equality, it has since given more attention to the gulf that exists between formal equality and de facto discrimination. For example, in connection with the prohibition of women's night work and Sunday work it has taken the view that the simple abolition of this prohibition would entail a material deterioration of the situation of women. It would neither create conditions that would enable men to contribute towards the upbringing of the children and the work of the joint household, nor prevent women being exploited as cheap labour on Sundays and at night-time. And the Federal Supreme Court recalled the lawmaker's responsibility in the achievement of equality in the following words: "Only the lawmaker is in a position to accomplish at the same time formal equality between the sexes and actual equality within the framework of employment and the family".[12]

The explicit mandate given to lawmakers to ensure legal and material equality in all spheres of life (art. 8, para. 3, 2nd sentence Cst.).

10. Under article 8, paragraph 3, 2nd sentence Cst., legislation shall ensure equality in law and in fact, particularly in family, education, and work. This provision thus mandates the lawmakers to concretize the principle of equality of the sexes. Contrary to the 1981 version, the second sentence expressly requires the lawmaker to guarantee de jure and at the same time to promote de facto equality. But this amendment is only a matter of drafting, the Federal Supreme Court and the dominant doctrine having adopted this interpretation of the concept of equality as far back as 1981.

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[11] ATF 125 I 11, 123 I 152, 120 V 312; see also Margrith Bigler-Eggenberger, Die bundesgerichtliche Rechtsprechung zu Art. 4 Abs. 2 BV, in: recht 12 (1994), No. 1, p.1 ff.

[12] ATF 116 Ib 284, 298.

11. The mandate contained in the second sentence of article 8, paragraph 3 Cst is addressed to legislation at all levels, Federal, cantonal and communal. It should be noted in this connection that the mandate to legislate has no effect on the distribution of competences between the Confederation and the cantons.

12. In referring to equality within the family and, in particular, to the right to equal pay for work of equal value (3rd sentence), the constitutional text implies that the mandate given to the lawmaker is not limited to the public domain. The law-making authorities have, in fact, carried out this mandate in various fields of public and private law, as shown in the present report in connection with each particular field.

13. According to the case law of the Federal Supreme Court, article 8, paragraph 3, second sentence Cst empowers lawmakers to take *positive action* towards the achievement of de facto equality between women and men.[13] Thus, the adoption of special measures is admissible and even imperative. The second sentence therefore allows lawmakers to waive the principle of equality in law set forth in the first sentence, provided that the positive measures taken are proportional to their purpose.

The right to equal pay for work of equal value (art. 8, para. 3, 3rd sentence Cst)

14. By virtue of article 8, paragraph 3, third sentence Cst, men and women shall have the right to equal pay for work of equal value. This provision expressly guarantees equality between men and women in terms of wages. This right to equality in terms of wages is valid not only where the man and the woman do the same work, but also where they do work that is different but of equal value. This constitutional right to equality as to wages can be directly invoked against a public or private employer (for the right to equality as to wages and the relevant case law, see para. 312 ff below).

The main lines of the Equality Act of 1996

15. The Act on Gender Equality[14] ("Equality Act") entered into force in 1996 in execution of the mandate contained in article 4, paragraph 2 oCst (now art.8, para. 3, 3rd sentence Cst). Its purpose is "to promote de facto equality between women and men" (art.1 LEg) and it relates to employment in private labour relations as well as in those governed by Federal, cantonal or communal public law (art. 2 LEg).

16. Article 3 LEg sets forth a *general prohibition of discrimination*, as follows:

> 1. "Discrimination against workers on the ground of sex, either direct or indirect, and in particular on the ground of their civil status or situation, or, in the case of women, of their pregnancy, shall be prohibited.
>
> 2. The prohibition of all discrimination shall apply, in particular, to recruitment for work, allocation of duties, arrangements as to conditions of work, remuneration, professional or vocational training and re-training, promotion and the termination of the work relationship."

[13] ATF 125 I 121; 116 Ib 283.

[14] Federal Act of 24 March 1995 on equality between women and men (Equality Act, LEg), RS 151.1.

17. Sexual harassment is expressly regarded as constituting discrimination (art. 4 LEg). On the other hand, the Equality Act confirms that appropriate steps taken to promote de facto equality do not constitute discrimination (art. 3, para. 3 LEg).

18. Persons who are victims of discrimination within the meaning of the Equality Act can request the competent tribunal or authority to prohibit an imminent act of discrimination, to ensure the cessation of an existing act of discrimination, to find that an act of discrimination has taken place, or to order the payment of wages due (art. 5 LEg; for more details, see para. 313 below).

19. The Equality Act also contains several provisions designed to make it easier for persons who are victims of discrimination to *assert their rights to equality in employment* (for more details, see para. 34 ff below).

20. By virtue of the Equality Act, the Confederation allocates *financial aid* with the aim of promoting the achievement of equality in employment, and provides services which give advice to women and assist women and men who have interrupted their paid activities in order to devote themselves to family duties to re-enter employment (art. 14 and 15 LEg; see para. 324).

21. Lastly, the Equality Act provides a formal legal basis for the *Federal Bureau of Gender Equality*, which is entrusted with encouraging the achievement of gender equality in all spheres of life and with eliminating all forms of direct or indirect discrimination (art. 16 LEg).

Switzerland's international commitments

22. In recent years Switzerland has contracted a number of *commitments in international public law* relating to the elimination of discrimination against women, the chief among them being the following:

23. The *European Convention on Human Rights* (ECHR)[15] was ratified by Switzerland in 1974. Its article 14 prohibits all discrimination, in particular on grounds of sex, in respect of rights guaranteed by the Convention.[16] Switzerland has also ratified additional protocol No. 7 to ECHR, with, however, a reservation concerning its article 5, which proclaims equality between spouses.[17] In present Swiss law the status of spouses is still unequal as regards cantonal and communal domicile rights and the family name. Attempts to abolish this inequality of treatment were defeated in Parliament in June 2001, principally owing to the rules proposed in the event of a difference between the spouses concerning the choice of the family name of children of the marriage (see para. 593 below). It should be noted that the rules governing acquisition and loss of Swiss nationality do not discriminate between the sexes (see paras. 61, 228 ff).

[15] European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 4 November 1950, RS 0.101, which entered into force for Switzerland on 28 November 1974 (amended by protocol No. 11 of 11 May 1994).

[16] On the subject of Protocol No. 12 to ECHR, which enshrines a general prohibition of discrimination, see para. 53 below.

[17] On this subject, see "Burghartz" ruling of the European Court of Human Rights, 22 February 1994, series A, No. 280-B.

24. The two *United Nations Covenants on Human Rights*,[18] which also prohibit discrimination against women, have been in force in Switzerland since 1992. Switzerland has, however, entered a reservation concerning article 26 of the International Covenant on Civil and Political Rights, which establishes a general and autonomous right to equality of rights. According to that reservation, equality of rights is guaranteed only in connection with rights protected by the Covenant.[19]

25. The *United Nations Convention on the Rights of the Child*[20] has been in force in Switzerland since 1997. It contains in its article 2 a prohibition of discrimination on grounds of sex. Switzerland has also acceded to a number of international or regional treaties that relate to the elimination of discrimination in the broad sense.[21]

26. Some of the ILO conventions ratified by Switzerland are aimed at the elimination of discrimination in specific contexts. That is true, in particular, of Convention No. 100 on Equal Remuneration of 29 June 1951[22] and of Convention No. 111 of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation.[23]

27. On 6 October 1999 the United Nations General Assembly adopted the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which relates to an *individual communications procedure*. Switzerland, which had participated in the preparatory work, was favourable to the principle of this optional protocol. The Federal Council is convinced of the need to create effective instruments for monitoring the promotion and advancement of human rights. Switzerland has therefore accepted the individual communications procedure provided within the framework of the 1984 Convention against Torture. The recognition of the individual communications procedure within the framework of the Convention on the Elimination of All Forms of Racial Discrimination is before Parliament for approval. With the same end in view, the signature and ratification of the optional protocol to the present Convention have been included in the legislation programme for 1999-2003. Before signing it, the Federal Council wishes, however, to study more closely its potential repercussions on the Swiss legal

[18] International Covenant on Economic, Social and Cultural Rights, 16 December 1966, RS 0.103.1, and International Covenant on Civil and Political Rights, 16 December 1966, RS 0.103.2. These two treaties were approved by the Federal Assembly on 13 December 1991 and entered into force for Switzerland on 18 September 1992.

[19] For the explanation of Switzerland's current refusal to withdraw this reservation, see first report of Switzerland to the Human Rights Committee dated 26 June 1996, paras. 483 ff. and second periodic report of Switzerland , 17 September 1998, paras. 245 ff; for the Human Rights Committee's comments on this matter, see Internet site of the Federal Department of Foreign Affairs, www.eda.admin.ch/eda/g/home/recent/rep/human.html.

[20] Convention on the Rights of the Child, 20 November 1989, RS 0.107.

[21] International Convention on the Elimination of All Forms of Racial Discrimination, 1956, RS 0.104; European Charter for Regional or Minority Languages, 1992; Framework Convention for the Protection of National Minorities, Council of Europe, 1995. For reports recently submitted by Switzerland pursuant to these treaties, which often contain information relevant to gender issues, see Internet site of the FDFA, www.eda.admin/ch/eda/f/home/recent/rep/human.html.

[22] Convention No. 100 of 29 June 1951 on Equal Remuneration, RS 0.822.720.0, was approved by the Federal Assembly on 15 June 1972 and entered into force for Switzerland on 25 October 1973.

[23] Convention concerning Discrimination in Respect of Employment and Occupation, No. 111, of 25 June 1958, was approved by the Federal Assembly on 15 June 1961 and entered into force for Switzerland on 13 July 1962.

order. Moreover, since policy in the matter of equality falls to a considerable extent within the competence of the cantons, the latter must be consulted first.[24]

Equality of rights and prohibition of discrimination in the legal orders of the cantons

28. As mentioned earlier, the principles of equality of rights and of de facto equality contained in the Federal Constitution also apply to the drafting and implementation of cantonal and communal laws. The constitutions of several cantons, supplementing and reinforcing art. 8 Cst, contain laws that relate to the principle of equality of rights between women and men or to the prohibition of discrimination against women. Thus, the principle of equality and the prohibition of discrimination are today formulated in greater or lesser detail in the constitutions of, in particular, the cantons of Appenzell Outer Rhodes, Aargau, Berne, Geneva, Jura, Neuchâtel, Ticino, Vaud and St. Gall.[25] The constitutions of some other cantons are undergoing complete reviews in the course of which the question of the prohibition of discrimination is regularly discussed.

29. Competence to promote equality between women and men does not rest exclusively with the Confederation. From article 8, paragraph 3 Cst it follows that the cantons and communes, too, must ensure equality. Several cantons have adopted specific legal standards relating to measures for the promotion of de facto equality. Certain cantonal regulations introducing the Federal Equality Act[26] relate principally to the establishment and operation of conciliation offices. Provisions involving gender equality can also be found in a wide range of sectoral laws; regulations governing compulsory and university education, taxation, fire and police services and the wording of official documents contain provisions that relate more or less directly to gender equality. That is true, for example, of the principle of equal representation on decision-making and advisory bodies (e.g. in the field of education) or that of preferential treatment of women's applications to serve on the staff of public services and authorities (e.g. cantonal administrations, extra-parliamentary commissions, etc.), which appear in many cantonal and communal normative provisions.

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[24] See Message of the Federal Council of 29 August 2001 on the introduction of the so-called "individual communications" procedure according to art.14 of CERD, FF 2001 V 5649.

[25] For example, article 10 of the constitution of the canton of Berne provides that "all discrimination, in particular on grounds (...) of sex, (...) shall be prohibited absolutely. Men and women shall be equal before the law. They shall be entitled to the same education, to equal pay for work of equal value and to equal access to entry of the civil service and public educational establishments. The canton and the boroughs shall encourage the achievement of equality between men and women". Article 7 of the constitution of the canton of Ticino expressly guarantees not only equality of rights between women and men but also the right to equal pay for work of equal value.

[26] Federal Act of 24 March 1995 on equality between women and men (Equality Act, LEg), RS 151.1.

B. Legal protection of women against acts of discrimination (art. 2 (c) of the Convention)

Possibility of directly invoking the prohibition of discrimination

30. The Federal Supreme Court has recognized that equality before the law as set forth in article 8, paragraph 3, first sentence, and the right to equal pay for work of equal value are constitutional rights. They can be invoked directly before the cantonal and federal authorities and tribunals, in particular within the framework of proceedings in civil, criminal and administrative law and in that of appeals in public law against cantonal decisions and rulings.[27] The same applies to the prohibitions of discrimination Switzerland has undertaken to respect by becoming a party to the international treaties referred to above. These treaties entail immediate legal effects immediately upon Switzerland's becoming a State Party, and can be invoked directly by individuals provided that the legal authorities deem the provisions of the treaties to be directly applicable.

31. The instrument of *appeal in public law* is particularly important in this context; it is an instrument for the verification of constitutionality with the help of which the Federal Supreme Court considers, in particular, appeals brought against cantonal authorities for violation of constitutional rights and violation of international treaties. In the first few years that followed the entry into force of article 8, paragraph 2 oCst, the Federal Supreme Court, in the interest of respecting Switzerland's federalist structure, exercised some restraint in cases where the cantonal law in question anteceded 1981, i.e. where that law had been promulgated before the principle of equality of rights had been explicitly included in the Federal Constitution. The purpose was to allow the cantons a "transitional period" in which they might adapt their laws to the new principle of equality of rights. This period of restraint ended with the adoption of the decision on women's voting and eligibility rights in the canton of Appenzell Inner Rhodes in 1990.[28]

32. The power of the Judiciary to verify the constitutionality of *Federal laws* (and hence their conformity to the principle of equality of rights) is limited. According to article 191 Cst., the Federal Supreme Court and other authorities that apply the law must follow the Federal Statutes and international law. Thus, the Federal Supreme Court is not empowered to prohibit the application of Federal Statutes that may be unconstitutional unless those statutes are also inconsistent with Switzerland's obligations under the ECHR.[29]

Direct applicability of the Convention

33. Immediately upon coming into force, the Convention, like all other international treaties, became an integral part of the Swiss legal order (doctrine of monism). In so far as the provisions of the Convention are directly applicable, the rights deriving from them can therefore be invoked directly before Swiss authorities

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[27] For details see Core document forming part of the reports of States Parties: Switzerland, 22 February 2001, HRI/CORE/1/Add. 29/Rev.1, paras. 46 ff and www.eda.admin.ch/eda/f/home/recent/rep.human.

[28] Cf. ATF 116 Ia 359.

[29] ATF 125 II 420, 126 I 1, but also ATF 125 III 209, 122 III 414. On this point see e.g. Andreas Auer / Giorgio Malinverni / Michel Hottelier, Droit constitutionnel suisse, vol. I, Berne 2000, paras. 1826 ff, 1838 ff.

at all levels (Federal, cantonal and communal). In its message to Parliament concerning accession to the Convention, the Federal Council took the view that the Convention's content is largely programmatic and that its provisions are not, in principle, directly applicable, since they are principally addressed to the authorities. However, it is up to the authorities responsible for applying the law to decide whether or not the provisions invoked are directly applicable. Thus the message does not rule out "that the Federal Supreme Court may declare certain parts of articles 9 and 15, as well as of articles 7 and 16, to be directly applicable".[30]

Measures facilitating the judicial implementation of claims to equality in employment

34. The Equality Act of 1995 (LEg) contains several provisions designed to facilitate the judicial implementation of claims to equality in employment. Contrary to the general rule regarding the *burden of proof*, according to which the claimant must demonstrate the existence of his/her claim, article 6 LEg puts the onus of proof on the employer: if the persons concerned can demonstrate the *probable* existence of discrimination in the assignment of duties, arrangements as to conditions of work, pay, professional/vocational training or re-training, promotion or termination of the work relationship, discrimination is presumed to exist and it is up to the employer against whom the action is brought to prove the contrary (in this connection, cf. e.g. ATF 124 II 436).

35. *Organizations* whose task it is to promote equality between women and men or to defend the interests of workers of both sexes can obtain a finding of discrimination where it appears probable that the outcome of the action will affect a considerable number of work relationships (art. 7 LEg). Persons whose application for a post has been rejected can demand an *explanation in writing* from the employer (art. 8 LEg). *Retaliatory dismissals* can be proceeded against. Protection against dismissal is in force during the period of internal proceedings within the enterprise, conciliation proceedings or court proceedings and for six months after the conclusion of the latter (art. 10 LEg).

36. The law requires the cantons to establish, in respect of labour relations in private law, *conciliation offices* to advise the parties free of charge and help them to reach agreement (art. 11 LEg).

37. Lastly, the special provisions of article 343 of the Swiss Code of Obligations (CO)[31] concerning actions in labour law apply to actions relating to discrimination. The cantons must ensure *simple, rapid and free proceedings* in the case of litigation of this kind. The court must *establish the facts proprio motu* (doctrine of *proprio motu*) and must freely examine the evidence. Furthermore, the cantons cannot rule out proceedings in writing or the parties' right to be represented (art. 12 LEg).

38. In this connection, see para. 327 below.

[30] Message of the Federal Council concerning the 1979 Convention on the Elimination of All Forms of Discrimination against Women, 23 August 1995, FF 1995 IV 869.

[31] Federal Act of 30 March 1911 supplementing the Swiss Civil Code (Book Five: Law of Obligations), RS 220.

Alleviated procedures for women victims of an act of violence

39. The Federal Act on Assistance to Victims of Offences[32] is designed to improve the situation of the victim in general and his/her position in criminal proceedings in particular. Although it applies to victims of both sexes, the Act aims particularly at improving the situation of women victims of attacks against their sexual, physical or psychological integrity. Several provisions facilitate the bringing of legal actions by victims of acts of violence (see paras. 101 ff below).

C. Prohibition of discrimination by public authorities (art. 2 (d) of the Convention)

Direct applicability of article 8, paragraph 3 Cst

40. As explained earlier, article 8, para. 3 Cst. is directly applicable to relations between the public authorities of the Confederation, the cantons and the communes, on the one hand, and private persons on the other hand. According to the case law relating to art. 8, para.3 Cst (or to art. 4, para.2 oCst) referred to earlier, the prohibition of discrimination is effectively invoked before the courts against decisions of the authorities at all levels. However, in some important fields of administrative activity figures documenting the practice of the authorities in general, and the allocation of public resources in particular, in a gender perspective and making it possible to analyse their effects on gender equality are not available.

Measures adopted by the Confederation

41. The Federal authorities have adopted a number of measures to ensure respect of the prohibition of all discriminatory acts or practices. These measures are discussed in greater detail under the separate headings of this report; here we will confine ourselves to a few major points.

42. With regard to the Confederation's role as *employer*, see paras. 343 ff below.

43. In recent years the public has been critical of the system of family taxation in connection with the direct Federal tax, claiming that it is based on a traditional distribution of roles, fails to take sufficient account of developments in the social and economic situation of families in Switzerland, and, in particular, has negative effects on the situation of married women who go out to work. As part of the *reform of taxation of couples and families* currently in progress at Federal level, Parliament is considering several models of income splitting and individual taxation of partners in a couple.

44. The Federal Act on Public Contracts[33] obliges the Confederation, when *adjudicating a public contract*, to take into consideration only those tenderers who guarantee the equality of women and men as regards remuneration in Switzerland. The Administration, as the adjudicator, has the right to check the observance of the provisions relating to equal treatment of women and men and to demand evidence thereof (art. 8, para. 2 of the Public Contracts Act). If a tenderer fails to meet the obligations set forth in article 8, this may entail the withdrawal of an adjudication

[32] Federal Act of 44 1991 on Assistance to Victims of Offences (LAVI), RS 312.5.

made in his favour or his exclusion from the proceedings (art. 11 (d) of the Public Contracts Act). However, a tool has not yet been provided for systematically verifying whether the tendering enterprises respect equality of treatment. Neither is there any possibility of appeal against the adjudication of a contract not in conformity with the law.

45. The Confederation's authorities have made efforts to *eliminate discriminatory language (non-sexist formulation)*. Federal Council decision of 7 June 1993 provides as follows in its paragraph 1: "With regard to designations of posts, duties and professions, and in administrative texts not addressed to a specific individual (reports, memoranda, etc.), the principles of non-sexist formulation shall be applied in the three official languages, the inherent possibilities of each language being taken into consideration". The principles of non-sexist formulation, which apply more particularly to new legal texts, have been applied in the first instance principally to German.

46. In 1999, the Management Committee of the National Council, which was called upon to evaluate the efficiency of the Federal Office for Gender Equality, recommended that the Federal Council should take additional steps to increase the Federal administration's awareness and to develop its competence in matters of equality. The Committee also recommended to Parliament and to the Federal Council that they should indicate in all their messages (relating to draft Acts) and reports the potential impact of the proposed drafts in terms of gender equality (recommendations 3 and 4).[34]

Measures adopted by the cantons

47. The majority of cantons have adopted measures of varying force and intensity to ensure respect of the prohibition of discriminatory acts within their field of action.

48. For action taken by cantonal and communal administrations in their role as employers, see para. 360 below.

49. As regards equality of opportunities in the field of *public contracts*, some cantons have adopted legal provisions modelled on the rules in force at Federal level (art. 8 of the Public Contracts Act); such laws governing public contracts, ordinances concerning tenders, etc., stipulate that public contracts can only be awarded to tenderers who offer equal treatment to women and men. Article 33, paragraph 1 (e) of the ordinance on tenders of the Canton of Berne,[35] for example, provides that enterprises which offer "to their employees conditions of work which, at the level of remuneration and of equal pay for men and women , (...) do not correspond to the law (...)", cannot participate in tendering for public contracts. In the Canton of Fribourg, a regulation makes it possible to check the conditions in which equal treatment of women and men is ensured in tendering enterprises.[36] Furthermore, the inter-cantonal agreement on public contracts of 25 November 1994

[33] Federal Act of 16 December 1994 on public contracts, RS 172.056.1.

[34] Federal Office for Equality between Women and Men: assessment of efficiency after ten years of activities, report dated 18 November 1999 of the Management Committee of the National Council.

[35] Ordinance on tenders of 29 April 1998, RSB (Compendium of laws, Berne) 731.21.

[36] Article 37 of the regulations on public contracts of 28 April 1998.

(AIMP),[37] to which 23 of the 26 cantons had acceded by the end of 1998, requires the cantons to respect the principle of equal pay for men and women in the adjudication of public contracts (art. 11 (f)).

50. Like the Confederation, several cantons have adopted rules on *equal treatment as regards language*, which apply in particular to official documents and communications. While in the majority of cases (in particular, in the cantons of Aargau, Basel-Land, Fribourg, Lucerne, Schwyz, Solothurn and Thurgau) these rules take the form of directives or recommendations, other cantons have chosen to deal with the subject through specific activities, in particular professional re-training organized in their administrations (this is the case in Aargau and Obwald).

Switzerland's international policy in support of equality

51. Within the framework of its international policy of promotion of human rights, Switzerland affirms its conviction that equality of rights for women is an inalienable and inseparable element of human rights in general, of which it forms an integral part.

52. Switzerland supports the efforts of the United Nations to promote equality between women and men. In particular, it participated in all World Conferences on Women since 1975, taking an active part in the debates. It prepared a report on the situation in Switzerland for the 1995 World Conference on Women in Beijing. With a view to concretizing the Beijing Platform for Action, the Federal Council adopted in 1999 a *plan of action* for the advancement of equality between women and men,[38] which proposes specific measures to various national interlocutors. At the special session of the United Nations General Assembly entitled "Women 2000: gender equality, development and peace for the twenty-first century" held in New York from 5 to 9 June 2000 ("Beijing+5"), Switzerland took the floor in support of continuing the implementation and development of the Beijing Platform for Action.

53. As a member of the Council of Europe and of the Organization for Security and Cooperation in Europe (OSCE), Switzerland works actively towards the achievement of gender equality at the European level. On 4 November 2000, Protocol No. 12 to the ECHR, which sets forth a general prohibition of discrimination, was opened for signature. The effects of Protocol No.12 on the Swiss legal order have yet to be analysed in greater detail. Once that study is completed, the Federal Council will decide whether or not Switzerland can sign the Protocol.[39] Switzerland has also taken action in favour of women's rights and equality within the United Nations Commission for Human Rights, in particular by co-signing certain resolutions on those subjects. As part of its human rights policy in general, and more particularly of the bilateral dialogues in which it is engaged with several countries, Switzerland has taken initiatives of its own towards the protection and promotion of women's rights. In that perspective, it supports certain organizations in civil society and intervenes in specific cases of human rights violations.

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[37] Inter-Cantonal Agreement on Public Contracts of 25 November 1994, RS 172.056.4.

[38] Plan of action, Switzerland: Equality between women and men, follow-up to the Fourth World Conference on Women, Beijing 1995, Berne 1999 (hereinafter "Equality Plan of Action").

[39] In this connection, see the Federal Council's reply to Teutscher, motion CN 00 3674, "Ratification of Protocol No.12 on the prohibition of discrimination".

54. In the field of *development cooperation*, the Directorate for Development and Cooperation of the Federal Department of Foreign Affairs adopted in 1993 a development policy based on gender equality. The main principles of this policy are that programmes and projects must not have a negative impact on women and children in developing countries; they must be at least as beneficial to women as to men; and they must, wherever possible, offer more support and resources to women who are alone responsible for their families. This policy will shortly be reviewed, without change to its main lines, with a view to incorporating recent knowledge acquired on that field and bringing it into line with the final document of the Beijing World Conference on Women of 1995 and with the directives on gender equality adopted by the Development Assistance Committee (DAC) of the Organization for Economic Co-operation and Development (OECD). As a member of OECD, Switzerland participates in the DAC Working Party on Gender Equality.

55. With a view to supporting the implementation of this policy, a "gender equality service" has been established within the Directorate for Development and Cooperation. It has developed a strategy whose foreground is occupied by education, advisory activities at all levels and the creation of national and international networks. Moreover, some sections of the central office and of coordination offices in partner countries have appointed persons of both sexes who can be consulted in matters relating to social relations between men and women. These consultants often work in tandem with the partner countries' organizations, networks and experts.

D. Measures designed to eliminate discrimination against women by any person, organization or enterprise (art. 2 (d) of the Convention)

56. As stated earlier, the second sentence of article 8, paragraph 3 Cst. also mandates the lawmaker to ensure equality in law and in fact in relations between private individuals, in particular in the family, in education and at work. As explained in the present report, Swiss lawmakers have adopted various measures towards that end.

57. The right to equal pay for work of equal value, set forth in the third sentence of article 8, paragraph 3, is directly applicable to relations between women workers and private and public employers. The Equality Act generally prohibits discrimination in employment and sets out to promote de facto gender equality in all labour relations (see para. 16 above; for more details see paras. 311 ff).

58. In order to change stereotyped discriminatory attitudes that are widespread in society, as well as individual discriminatory practices in private life, the Confederation and the cantons have adopted a variety of measures, in particular with a view to raising awareness and informing the population (see also paras. 77 ff below). Note should be taken, in particular, of the tendering rules of the Confederation and certain cantons, which are designed to incite enterprises to practice non-discriminatory policies and which prohibit public authorities from considering tenders by enterprises applying discriminatory practices (see also paras. 44 and 49).

E. Measures designed to modify discriminatory legislation and case law (art. 2 (f) of the Convention)

Brief review of recent legislative changes

59. In 1986, in response to a parliamentary question, the Federal Council drew up a document on the "Equality of rights between men and women" legislative programme, which listed all Federal laws that treated women differently from men. A large part of the laws in question have since been amended or otherwise changed. A brief review of the main legislative changes aimed at eliminating discrimination that have taken place in the last few years will be found below.

60. The new *marriage law*,[40] which came into force in 1988, abolished the husband's preponderant role in the family, replacing it by partnership within the married couple based on equality of rights and obligations of each spouse. Likewise, the new marriage law completely abolishes the assigning of fixed roles to husband and wife. Duties involving the upbringing and care of children as well as household duties are also given a higher standing in relation to employment outside the home (see paras. 129, 537, 567 and 591 ff).

61. The Federal Act on *the acquisition and loss of Swiss nationality*[41] has also been amended to ensure gender equality. Since 1992, the acquisition of Swiss nationality is subject to identical conditions for both sexes (see paras. 228 ff, 592 ff and 605 ff below).

62. The Federal Act on *residence and domicile of aliens*[42] has been amended in some particulars. Since 1992, the foreign husband of a Swiss woman has the same rights as the foreign wife of a Swiss national of the male sex (see para. 559 below).

63. The 10th revision of the *Federal Act on old-age and survivors' insurance*,[43] which entered into force in 1997, marks an important step towards gender equality. The system of pensions for married couples has been abolished and replaced by a system of individual pensions not dependent on civil status. The 10th revision also introduces a system of bonuses for upbringing and care in the form of a "fictitious income", which is decisive in calculating the amount of the pension. Incomes acquired by the spouses during marriage are added together and divided into two equal halves, which are then credited to each of the spouses ("splitting"). A widower's pension – which, however, is subject to more restrictive conditions that the widow's pension – has been introduced. The retirement age for women was raised in two stages from 62 to 64 years, the retirement age for men remaining unchanged at 65 years (for more details see paras. 374 ff).

64. The new Equality Act,[44] which entered into force in 1996, is aimed at ensuring *equality in employment*. It prohibits discrimination against women in labour relations and applies to both public and private employers (see paras. 129 and 588 ff below).

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[40] Art. 90 ff, Swiss Civil Code of 10 December 1907 (CC), RS 210.

[41] Federal Act of 29 September 1952 on the acquisition and loss of nationality (Nationality Act, LN), RS 141.0.

[42] Federal Act of 26 March 1931 on residence and domicile of aliens (LSEE), RS 142.20.

[43] Federal Act of 20 December 1946 on old-age and survivors' insurance (LAVS), RS 831.10.

[44] Federal Act of 24 March 1995 on equality between women and men (Equality Act, LEg), RS 151.10.

65. The new *divorce law*,[45] which entered into force on 1 January 2000, regulates, in particular, the economic consequences of divorce (see para. 598 ff).

Consideration by public institutions of the question of social relations between the sexes

66. In order to change existing laws, habits and practices, it is essential to ensure that the idea of gender equality is firmly established in the day-to-day work of authorities and organizations. To that end, the Confederation and the cantons have created special institutions mandated to work towards the advancement of gender equality. Besides ensuring that the authorities take gender issues into account in their work, these institutions are also called upon to draft instruments designed to promote equality and to enhance the public's awareness of gender equality issues.

67. In 1976 the Federal Council set up the *Federal Commission on Women's Issues*, the first national institution in the field of equality. This extra-parliamentary standing body is composed of men and women delegates from women's associations, trade union and employers' organizations and scientific circles, as well as other specialists. It advises the Federal Council on equality issues, participates in consultations on draft Federal regulations, draws up models and formulates recommendations. It analyses policy developments relating to women and equality, evaluates the measures adopted and reports regularly to the Federal Department of the Interior.

68. The Commission collaborates with interested authorities, organizations and other circles. Its task consists, in particular, in informing and alerting public opinion to equality issues by participating in projects and campaigns, organizing symposia and publishing documents of various kinds. Subjects dealt with by the Commission in the past few years have related principally to women's participation in political and public life and to issues of social policy and social insurance, as well as to that of violence against women. The Commission's 2000 budget was approximately 170 000 Swiss francs. Its secretariat, which employs three women staff members occupying a total of 1.7 posts, is administratively attached to the Federal Office for Equality between Women and Men.

69. The *Federal Office for Gender Equality*, established in 1988, is mandated by the Federal Council to promote equality in all walks of life and to work towards the elimination of all forms of discrimination, direct or indirect. The Equality Act of 1995 provides the Office with a legal basis by outlining its mandate with regard, in particular, to the following tasks (art. 16 LEg):

- To inform the population; to advise private individuals and the authorities;
- To undertake studies and issue recommendations addressed to the authorities and to private individuals;
- To participate, when the occasion arises, in projects of national interest;

[45] Article 111 ff of the Civil Code. For the review of the divorce law, see also the Message on the review of the Swiss Civil Code (civil status, conclusion of marriage, divorce, law of filiation, alimony, family shelters, marriage guardianship and brokerage) of 15 November 1995, in: FF 1996 I p. 1 ff.

- To participate in the drafting of normative acts to be enacted by the Confederation in so far as these are relevant to the attainment of equality;

- To deal with requests for financial assistance in connection with programmes for the encouragement of gender equality in employment and for advisory services; to monitor the implementation of encouragement programmes.

70. In the past two years the Federal Office for Gender Equality has worked principally on the following issues: equality of opportunities and of wages in professional life; situation of girl apprentices; equality in law; violence against women; and gender mainstreaming. The Office has also acted as the motive force in the preparation of the national plan of action entitled "Equality Between Women and Men", which the Federal Council approved as part of the follow-up of the 1995 World Conference on Women. In accomplishing its tasks, the Gender Equality Office had at its disposal a budget of 5.54 million Swiss francs in the year 2000. It employs thirteen persons occupying 7.9 posts, including a legal trainee's post.

71. The Federal Office of Personnel has included since 1981 a central service entrusted with promoting the interests of women employed by the Confederation. This service advises and assists women staff members responsible for equality matters ("equality delegates"), personnel officers and officers of both sexes at the head of Federal offices and departments in the implementation of the Federal Council's directives. It proposes instruments in support of specific equality promotion measures.

72. Many *cantons* and some of the major cities have created *equality services* within their administrations to deal with internal gender equality issues. More than half of the cantons possess, in addition, a service mandated generally to promote equality within the population. The duties of these services and the financial and human resources at their disposal vary from one case to another. Most cantons have set up equality committees to advise the cantonal government in this area.

73. Twenty-five services of the Confederation, the cantons and the cities have joined together to form the *Swiss Conference of Gender Equality Delegates*, which supports, coordinates, devises and carries out activities on the national or regional scale. The Conference participates in efforts to raise awareness within public opinion and formulates views in connection with consultations on normative acts of the Confederation with a view to ensuring that the specific standpoint of equality is reflected in a consistent and lasting equality policy. At its regular meetings, the Conference seeks to use synergies between its members in launching joint projects of supra-regional or national importance.

74. Many equality services and committees deplore the inadequacy of financial resources at their disposal in dealing with the many difficult tasks facing them. Moreover, the number of requests addressed to these services is steadily rising as equality problems are being taken more and more seriously as a political issue by wide circles of the population. As indicated, in particular, in the National Plan of Action on Equality (cf. para. 52 above), it will be essential to provide equality institutions with appropriate funding and, if necessary, to create additional posts in these institutions.

Analysis and statistics

75. In order to form a clear picture of progress being made in achieving equality – the advances accomplished, the reverses suffered and their respective causes – it is necessary to conduct regular detailed studies of gender roles in society. This is required under the Federal Statistics Act of 9 October 1992,[46] according to which the purpose of Federal statistics must be, inter alia, the evaluation of the implementation of the constitutional principle of gender equality (art. 3, para. 2 (d) LSF).

76. The Federal Statistical Office gathers and analyses data on women's representation in political and public life and on the situation of women and men in professional life, in the family and in education. In 1993 it published an initial report entitled "Towards equality?" in which it presented and analysed the essential data on both sexes in these areas. Updated reports have appeared in 1996 and 1997.[47] The Federal Statistical Office regularly publishes, in other forms, data concerning equality in other areas of current interest (political participation, equal pay, etc.). The most important data relating to the situation of women in Switzerland are regularly updated on the Internet.[48]

77. Between 1993 and 1996 the National Fund for Scientific Research financed a 6 million franc national research programme entitled "Women, law and society" (PNR 35), based on the view that the effectiveness of equality policies is predicated upon the elaboration of adequate strategies, which, in turn, call for sound scientific knowledge and for inter-disciplinary efforts. The object of the research programme was to identify the factors that impede the achievement of equality in Switzerland today, to evaluate existing measures and to suggest new lines or approach. In future, the National Fund for Scientific Research intends to devote greater attention to the incorporation of the equality concept in scientific work, in national research programmes and in priority research areas.

Information, awareness-raising and mobilization of public opinion

78. Changing discriminatory practices calls for efforts to inform the population, to enhance its awareness and to mobilize public opinion. The Confederation's equality offices and commissions have an important role to play in this area. Besides issuing reports and recommendations, they organize symposia and campaigns on a variety of topics. Furthermore, the Federal Office for Gender Equality operates a documentation service available to the public.

79. The dense network of *women's organizations* in Switzerland plays a capital role in terms of communications with the public at large (on the role of women's organizations in Switzerland, see also paras. 203 ff below). It includes a considerable number of associations active in various fields. While some organizations operate exclusively at the local or regional level, others are attached to

[46] Federal Statistics Act (LSF), RS 431.01.

[47] Federal Statistical Office, Vers l'Egalité? La situation des femmes et des hommes en Suisse, Second statistical report, Berne 1996 ; Federal Statistical Office, Vers l'Egalité ? Actualisation des principaux indicateurs 1997, Berne 1997. Also see the prospectus issued jointly by the Federal Statistical Office and the Federal Office for Gender Equality, Vers l'Egalité? , Berne – Neuchâtel 1998.

[48] www.statistik.admin.ch.

cantonal or national umbrella associations. Women's organizations regularly bring up women's issues in public debates, participate in consultative procedures on draft laws and launch initiatives and petitions on problems of society in general and equality in particular. Many measures adopted in Switzerland towards the elimination of discrimination against women owe their success to the patient work conducted by women's organizations, women's projects and the feminist movement over the years. It is they who have created awareness and have mobilized public opinion. Women's organizations have been, and still are, very active in such areas as regulation of old-age pensions, maternity insurance, health insurance, women's electoral and eligibility rights, marriage law and the creation of gender equality offices. They have contributed towards the changes that have taken place. Non-governmental organizations are also participating more and more, in various forms, in the Government services' efforts to advance the cause of equality in conformity with the national plan of action on gender equality (see para. 52 above).

F. Abolition of discriminatory penal provisions (art. 2 (g) of the Convention)

80. The Swiss Penal Code,[49] which sets forth the material standards of Swiss penal law, contains no provisions that are discriminatory against women (on penal standards relating to abortion, see para. 463 below).

81. No large-scale work on gender-based differences in the treatment of persons charged with criminal offences or serving sentences has been conducted to date.[50] According to criminal police statistics published by the Federal Office of Police in 1999, the proportion of women among offenders under judiciary investigation has slightly diminished in the past few years and now stands at the relatively low level of 14.6%. While pre-trial detention facilities are not gender-separated, women who have been sentenced serve their sentences in two penitentiary institutions set aside for women. The object of imposing a sentence is, in particular, to bring about the re-socialization of offenders of both sexes. A debate about the compatibility, in principle, of that object with deprivation of liberty is going on in Switzerland, as elsewhere.[51]

G. Temporary special measures in Swiss law (art. 4 of the Convention)

82. In accordance with the case law of the Federal Supreme Court, article 8, paragraph 3, second sentence Cst authorizes the lawmaker to adopt *positive measures* with a view to achieving de facto equality, in particular in the interest of women.[52] Measures to promote women's interests are thus permissible and even necessary. The second sentence, accordingly, authorizes the lawmaker to waive the principle of equal rights formulated in the first sentence, provided that the positive measures are proportional to the desired goal. The specific decision on the nature and extent of measures to be adopted by the State authority must result from weighing the interests of promoting equality of opportunities against those of

[49] Swiss Penal Code of 21 December 1937 (CP), RS 311.0.

[50] See, for example, Peter Albrecht, Weibliche Angeklagte vor Gericht: Mutmassungen ueber den sogenannten "Frauenbonus" in der Strafjustiz, PJA/AJP 11/2000, p. 1385 ff.

[51] Cf. Guenther Stratenwerth / Andreas Bernoulli, Der schweizerische Strafvollzug: eine empirische Untersuchung, Aarau / etc., 1983; Marie Boehlen, Frauen im Gefaengnis, Zurich 2000.

[52] ATF 125 I 21; 116 Ib 283.

formally equal treatment. This aspect is allowed for in the Equality Act,[53] which provides in its article 3, paragraph 3, that appropriate measures aimed at the de facto promotion of gender equality do not constitute discrimination.

83. In its legislative programme for 1986 entitled "Equality of rights between men and women" (see para. 59 above), the Federal Council explained that gender could no longer constitute grounds for different treatment. However, it made the following point: "But in some cases, proclaiming the principle of equality in law does not suffice to eliminate inequalities within an appropriate time frame; it may therefore prove necessary to apply transitional solutions that allow for special measures in favour of one of the two sexes. Equality in law is not an end in itself; it is a means of giving men and women the same opportunities of self-fulfilment in our society".[54]

84. The Federal Supreme Court's case law takes the view that *regulations introducing quotas* with a view to establishing de facto equality in men's and women's representation are not in themselves contrary to the Constitution, provided they respect the principle of proportionality. Invoking that principle, the Federal Supreme Court has ruled that the allocation of electoral mandates on a quota basis in a popular election is not acceptable. On the other hand, it accepts the principle of recourse to a quota system with a view to enhancing the electoral chances of candidates belonging to the under-represented sex. It also deems acceptable the introduction of quotas for organs filled by the authorities.[55] Proceeding on this basis of such case law, the Confederation and the cantons have set up quota systems in various contexts and having varying restrictive effects (for more details see para. 181 ff below).

H. Elimination of discrimination against women in particular circumstances

85. Particular categories of women are often faced with special situations and problems.[56] In the case of certain categories, discrimination on grounds of gender combines with other factors to create multiple discrimination. Thus, women who form part of disadvantaged categories of the population by reason of their nationality, origin, ethnic group, economic situation, educational level or age or because they are handicapped often suffer *multiple discrimination*.[57] In this report, issues particularly affecting these categories of women will be dealt with under each particular subject heading.

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[53] Federal Act of 24 March 1995 on Equality between Women and Men (Equality Act, LEg), RS 151.1.

[54] FF 1986 I 1139.

[55] See e.g. ATF 125 I 21, in particular 37.

[56] Statistical data on the situation of specific categories of women appear in various publications of the Federal Statistical Office, e.g. Federal Statistical Office, Population étrangère en Suisse 1998, Neûchatel 1998; Federal Statistical Office, Monitoring Multicultural Societies: A Siena Group Report, Neûchatel 1998; Federal Statistical Office, Les jeunes donnent-ils le ton ou sont-ils exclus? Un portrait statistique des jeunes en Suisse, Berne 1997; Federal Statistical Office, Les personnes âgées en Suisse, Neuchâtel 2000.

[57] Cf, message of the Federal Council on the introduction of a so-called "individual communications procedure" under art. 14 of the Convention on the Elimination of Racial Discrimination, 29 August 2001, FF 2001 V 5649.

86. In Switzerland there are a great many *foreigners*, both *women* and men. In the 1960s, immigration flows in Switzerland, as in other countries of Western Europe, consisted principally of young men in search of work. With the policy of stabilization introduced in the 1970s, new immigrants came to be principally women and children arriving for the purpose of family reunification. In parallel with this, the number of asylum-seekers has been increasing for several decades. In particular, women migrants from countries outside Western Europe are often exposed to cumulative discrimination based on both racist and sexist prejudices. They often face situations and problems each of which is analysed in its specific context below.

I. Prevention of violence against women

The present situation

Violence against women in Switzerland

87. Violence against women and girls, in particular within the family, has been of increasing interest to scientific research in recent years. In a health survey conducted in Switzerland in 1997, respondents were asked whether they had suffered violence during the 12 months preceding the survey or were afraid of suffering acts of violence in the future. The following forms of violence were cited in the questions: verbal violence, corporal violence, property offences. A total of 9% of the persons questioned said that they had suffered at least one of the above-mentioned forms of violence during the preceding 12 months. Roughly twice as many women as men are afraid of being threatened or harassed by letters or telephone calls. Fear of suffering sexual violence is distinctly more widespread among women. 13% of women in the 15 to 24 age group estimate their risk of being sexually harassed in the next 12 months as "high". A little over 7% of women in the same age group think it probable or very probable that they will be forced to engage in sexual acts during the next 12 months. The proportion is distinctly lower among women in the 25 to 34 age group (harassment 8%, sexual act under constraint 4%) and diminishes still further among older women. As regards property offences, the estimate of risk is also higher among women than men. Generally speaking, many more women than men are afraid of suffering some form of violence.

88. A study on violence against women within the couple published in 1997 under the auspices of national research programme No. 35 "Women, law and society: roads towards equality" provides the first numerical data on the situation in Switzerland in this area.[58] A survey conducted among a representative sample of 1,500 women, a fifth of the respondents between 20 and 50 years said that they had suffered physical or sexual violence from their partner at least once in their lives; 40% of the women questioned said they had suffered psychological violence and 6% said that they had suffered physical or sexual violence during the preceding 12 months. Interviews with women victims of violence concerning their contacts with the authorities (police, hospitals, courts, guardianship authorities, etc.) show that many staff members (of both sexes) of these institutions do not know enough about violence within the couple and do not yet possess sufficient skill in dealing with victims or perpetrators.

[58] Gillioz Lucienne / De Puy Jacqueline / Ducret Véronique, Domination et violence envers la femme dans le couple, Lausanne 1997.

89. National research programme No.40 of the National Fund for Scientific Research had as its topic "Day-to-day violence and organized crime". The object was, in particular, to analyse the need for research on the subject of violence against women and children and to tackle the question of trafficking in women and children. Between 1995 and 2000 the programme funded a series of research projects on the phenomenon of violence in the private sphere and on sexual violence. Some studies, in particular, dealt with the conditions necessary for combating violence within the family and on possibilities of public and private intervention against violence within the social fabric of neighbourhoods.

90. Within the framework of a survey conducted throughout Swiss territory in 1992/93, young people aged between 15 and 20 were questioned about forms of violence they had suffered. Sexual abuse was cited by 18% of the young women and 4% of the young men. The proportion was considerably higher (52%) among young women who had completed only their compulsory education. The same survey showed 7% of young women and 3% of young men as saying that they had been beaten by their parents.

91. While cantonal police statistics keep a record of complaints of rape and violence suffered by women, they fail to reflect the full magnitude of the phenomenon. Only a small proportion of the women and men concerned contact the police or an advice centre. But the number of women asking for help has been on the increase for several years. If some 300 to 400 cases of rape a year are reported to the police, it is thought today that the real number is 10 to 20 times greater. The evaluation of the Assistance to Victims of Offences Act contains additional facts that reveal the scope of violence against women: in 1997 and 1998, three-quarters of persons applying to an advice centre were women or girls. Since 2000, new detailed statistics drawn up by cantonal advice centres in collaboration with the Federal Statistical Office furnish additional information on the victims and perpetrators of offences, the kind of violence perpetrated and the kind of assistance given.

92. The files of the office of prosecutions and the criminal court in the canton of Basel City have been analysed as part of a study on violence against women within the couple. The result reveals a considerable gap between the number of criminal complaints and that of convictions. Out of 192 actions brought, 136 were closed, 126 of them because the complaint had been withdrawn. In many cases the reasons for the withdrawal are not on file. In some cases, the female complainant was quoted as saying that fear of her partner or of social pressure had led her to withdraw the action. Moreover, the authorities had not been very encouraging.[59]

93. Like other countries, Switzerland now realizes that society pays an enormous price for violence against women. Violence has repercussions on the victims' health; and health practitioners are often the first persons they turn to. The direct and indirect consequences of violence are manifold: lesions, serious or superficial; psychological difficulties (distress, psychosomatic problems), early pregnancies, contamination by sexually transmitted diseases; among indirect consequences, mention is made of a rise in the suicide rate, increased vulnerability to mental disease, deterioration of the self-image and self-neglect. A study estimates at approximately 130 million Swiss francs a year the cost of violence against women to

[59] Daniela Gloor, Hanna Meier, Pascale Baeriswyl, Andrea Buechler, Interventionsprojekte gegen Gewalt in Ehe und Partnerschaft: Grundlagen und Evaluation zum Pilotprojekt Halt-Gewalt, Berne 2000, p. 37 ff.

the Swiss health system, chargeable to the public authorities. This estimate, based on very conservative calculation criteria, does not include costs borne by the victims themselves, by holders of health insurance policies and by employers. To these should be added the macro-economic costs of police interventions and legal proceedings (187 million Swiss francs) and social assistance (72 million Swiss francs), considerably fewer costs being incurred in connection with help to the victims and with research. The study estimates that the total amount expended by the public authorities on preventing and dealing with violence against women is at least 400 million Swiss francs a year. In conclusion, the study observes that stronger preventive action could massively reduce violence and the medium-term and long-term costs it generates.[60]

94. Foreign women are often particularly vulnerable to violence on the part of their partner because their right to reside in Switzerland is linked to the duration of their marriage with the violent spouse. If the marriage has lasted for less than five years, a foreign woman without a short-term residence permit of her own is not entitled to apply for a long-term residence permit. In the event of divorce it is up to the cantonal Aliens' Police authorities to decide whether the residence authorization can be extended. According to directives by the Federal authorities, a residence authorization can be extended if this appears judicious in the light of the applicant's personal situation. That is the case, inter alia, where the female spouse cannot reasonably be expected to stay married, in particular because she has suffered ill-treatment (see also para. 579 below).

95. It is a matter of public interest that women who have been beaten, and in some cases also threatened with death, by their spouse should denounce such offences and should remain in Switzerland until the conclusion of the penal proceedings against their ex-spouse. The cantonal Aliens' Police authorities generally take account of this circumstance when deciding on the extension of a foreign woman's residence authorization, but in the absence of legal regulations their practice varies from case to case (see also paras. 144 and 579 below).

Violence against women as a motive for seeking asylum

96. Foreigners receive asylum in Switzerland and are recognized as refugees when, in their State of origin or in the country of last residence, they are exposed to serious persecution or have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.[61] Threats to life, corporal integrity or liberty, as well as measures entailing intolerable psychological pressure, are considered, in particular, as constituting serious persecution. In the amended Asylum Act,[62] which entered into force in 1999, article 3 has been supplemented by a provision to the effect that motives for taking refuge that are specific to women must be taken into consideration.

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[60] Alberto Godenzi / Carrie Yodanis, Erster Bericht zu den oekonomischen Kosten der Gewalt gegen Frauen, Fribourg 1998.

[61] Art. 3, para. 1 of the Asylum Act of 26 June 1998 (LAsi), RS 142.31; article 1, section A.2, Convention relating to the Status of Refugees (Refugee Convention) of 28 July 1951, RS 0.142.30.

[62] Federal Asylum Act (LAsi) of 26 June 1998, RS 142.31.

97. Switzerland grants asylum to women who, persecuted for one or several of the reasons listed in the Refugee Convention, have as a result thereof suffered serious harm, e.g. sexual violence. However, the fact of belonging to a gender is not a reason for persecution within the meaning of the Convention. Neither are women generally regarded as constituting a social category in Switzerland. That does not mean, however, that a category of women defined by certain characteristics cannot constitute a specific social group within the meaning of the Asylum Act (e.g. women who infringe a traditional code, persons having a homosexual orientation, etc.).

98. Switzerland grants asylum only if persecution is inflicted by State organs or their equivalent or if the State is not willing to protect the persecuted persons. The Federal Office for Refugees is currently considering developing its practice to involve the recognition of non-State persecution (e.g. inflicted by private persons, guerrilla bands, gangs, etc.). It is still too early to evaluate the potential impact of this possible development of practice in terms of gender-based persecution being taken into consideration in the treatment of asylum applications.

99. If the conditions for the granting of refugee status are not met but, for humanitarian reasons, a woman applicant's return cannot reasonably be demanded because she is exposed to a specific threat in her country of residence or of origin, Switzerland orders the woman to be admitted provisionally. However, the legal status of provisionally admitted persons is far more precarious than that of persons recognized as refugees. In particular, their residence authorization is provisional and they are not entitled to claim family reunification (see also para. 582).

100. Women who have suffered sexual violence can have great difficulty in presenting convincing arguments in support of their application for asylum and in representing their interests in the asylum procedure; they may be inhibited from talking about the experience by its traumatic nature, by a sense of shame or by reasons connected with their cultural background. Moreover, women are generally unaccustomed to dealing with the public authorities (see also paras. 114 and 143 below).

Measures adopted by the Confederation

Standards of penal law

101. Prevention of violence against women is governed by the articles on "Offences against life and corporal integrity" (art. 11 ff CPS) and "Offences against sexual integrity" (art. 187 CPS) of the Swiss Penal Code.[63]

102. The penal law provisions concerning offences against sexual integrity were reviewed in 1992. As a result of the review, the position of women has improved in several respects. Rape within marriage is now punishable, but only upon complaint. The distinction between simple and qualified rape has been abolished; women thus escape the difficulty and humiliation of having to bring proof previously required of them in order to qualify the rape. Exploitation of relations of dependence, e.g. at work, is punished more severely than before.

103. On the other hand, the 1992 review reduced from ten to five years the statute of limitations in respect of sexual acts involving children. It subsequently became

[63] Swiss Penal Code of 21 December 1937 (CPS), RS 311.0.

apparent that a five-year period is completely insufficient in view of the degree of dependence of the victims on the perpetrators, which means that the majority of the offences concerned can never be prosecuted. The statute of limitations in respect of sexual offences involving children was therefore re-established at ten years in 1997 (art. 187 CPS). In October 2001 Swiss lawmakers adopted a set of completely new rules governing the statute of limitations; the period for the extinction of penal action is now 30 years in the case of offences punishable by more than three years' imprisonment and seven years for other offences. In the case of crimes against sexual integrity committed against children under 16 and against dependent minors, as well as against the life and physical integrity of children under 16, the statute of limitations for penal action comes into operation only when the victim has reached the age of 15 years.

104. Sexual exploitation and sexual abuse of children are punishable under articles 187 and 188 CPS. Furthermore, article 197 section 3 CPS prohibits "hard" pornography; anyone making or circulating material showing sexual acts with children or containing acts of violence, in particular, is punishable by imprisonment or a fine. An amended version of this provision will likewise punish the possession of such material (on the subject of violence against children and sexual exploitation of children and adolescents, see initial report of Switzerland on the implementation of the Convention on the Rights of the Child). The current parliamentary debate in connection with the review of the general part of the Penal Code also concerns a new article 5. This provision will enable serious sexual offences committed against minors abroad to be prosecuted in Switzerland, irrespective of the perpetrator's and victim's nationality and domicile, the place of commission of the offence and the legislation applicable in the country concerned.

105. In 1997, the National Council approved two parliamentary initiatives requesting that sexual offences with violence (sexual constraint, art. 189 CPS; rape, art. 190 CPS) as well as simple bodily harm inflicted within marriage or a similar relationship be made actionable automatically instead of only upon complaint by the victim, as hitherto. The competent parliamentary committee is currently drafting proposals with a view to amending the Penal Code to that effect.

106. In Swiss penal law, sexual mutilation constitutes grievous bodily harm (art. 122 CPS), which is prosecuted automatically.

Assistance to victims of offences

107. In 1984, a new article (today art. 124 Cst.) making it obligatory for the Confederation and the cantons to grant assistance to victims of attacks on their physical, psychological and sexual integrity was added to the Constitution. The Assistance to Victims of Offences Act,[64] which came into force in 1993, provides for assistance including advice, protection of the victim and defence of her/his rights in penal proceedings, as well as payment of compensation and moral damages. Such assistance is available to any person having suffered a direct attack on his/her corporal, sexual or psychological integrity due to an offence, whether or not the aggressor has been identified and whether or not wrongful behaviour was involved. Assistance to victims is not intended especially for women, but the purpose of the Act was to improve the position in penal proceedings of victims, in particular those

[64] Federal Act of 4 October 1991 on Assistance to Victims of Offences (LAVI), RS 312.5.

of sexual violence. This is the only way to make the victims more inclined to bring a complaint.

108. Under the heading of *"Protection and rights of the victim in penal proceedings"*, the Act requires the authorities to protect the victim's personality at all stages of the proceedings. The victim, who has a limited right to keep silent in order to protect his/her personality, can refuse to testify on matters involving his/her private life. The victim has the right to have his/her anonymity preserved from the public. If the offence consists in an attack on sexual integrity, the victim can request that the case be heard in camera. In any event, proceedings take place in camera where the victim's preponderant interest so requires. Furthermore, at the victim's request, the authorities avoid bringing the accused and the victim face to face. A confrontation can only be ordered where the accused person's right to be heard or a preponderant interest of the penal prosecution make it imperative. The victim of an offence against sexual integrity can request to be heard by a person of the same sex (art. 6.3 LAVI) and can also request that the bench should include at least one person of the same sex as he/she (art. 10 LAVI). A study on the efficacy of LAVI carried out at Geneva University on behalf of the Federal Office of Justice takes the view that some provisions of the Act have really improved the status of the victim while others, in particular the right to refuse to testify, have a double-edged effect and can often be prejudicial to the victim.[65]

109. Any victim of an offence committed in Switzerland can, subject to certain conditions, request *compensation and moral damages* from the cantonal service in charge of the case. The compensation (between 500 and 1,000 Swiss francs) is calculated on the basis of the harm suffered and of the victim's income. Moral damages, on the other hand, are independent of income; they are paid if the victim has suffered serious prejudice and if the circumstances so warrant (cf. art. 12.2 LAVI).

110. The Assistance to Victims Act makes it incumbent upon the cantons to place at least one *advice centre* at the disposal of victims of offences. These advice centres provide victims with immediate medical, psychological, social, material and legal assistance and, where necessary, continue to furnish assistance over a prolonged period. Assistance provided directly by the centre and immediate help furnished by third parties are free of charge; where the personal situation of the victim so warrants, the centre will also cover other expenses (e.g. lawyers' fees). Women victims of violence today form the majority of persons requesting assistance. In 1997 and 1998, 76% of persons applying to cantonal advice centres were women. In most cases (about three-quarters), they had suffered sexual offences or physical injury. Thirteen advice centres in 9 cantons are intended specially for women and children victims of sexual aggression.[66]

111. The three evaluation reports published to date by the Federal Office of Justice contain various proposals aimed at improving assistance to victims and enhancing their protection in penal proceedings. A partial review of the Assistance to Victims

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[65] Robert Roth et al., La protection de la victime dans la procédure pénale, Centre d'étude, de technique et d'évaluation législative, Geneva University 1997 ; see also Federal Office of Justice, Deuxième rapport de l'Office Fédéral de la justice au Conseil Fédéral concernant l'exécution et l'efficacité de l'aide aux victimes, Berne 1998, chapter 13.

[66] Federal Office of Justice, Troisième rapport de l'Office fédéral de la justice au Conseil fédéral concernant l'exécution et l'efficacité de l'aide aux victimes (1993-1998), Berne, May 2000.

Act has made it possible to introduce provisions aimed at improved protection of girl victims of sexual offences. In particular, the new provisions prohibit any confrontation between a female minor who is the victim of an offence and the accused. They also provide for the closure of the proceedings where the child's interest imperatively requires it. On the basis of the third evaluation report, the Federal Department of Justice and Police has set up a committee of experts to undertake a complete review of LAVI. The committee will submit its draft before the summer of 2002. The review will relate to the Act's sphere of application, the conditions for granting assistance, the duties of advice centres and forms of assistance provided by them, the time limits for requesting compensation or moral damages, and the introduction of alternatives to moral damages.

Measures adopted at the international level

112. The Federal Department of Foreign Affairs endeavours to give particular attention to the problem of violence against women everywhere in the world. It takes a special interest in problems of violence by representatives of State power, trafficking in women, violence against women in conflict situations, protection of women representatives of human rights organizations, forced sterilizations, violence in the home, sexual mutilation and crimes committed "to protect the family honour". Switzerland supports the work of the United Nations Special Rapporteur on Violence against Women, intervenes within the framework of bilateral relations on behalf of individual victims of violence, and works towards the respect and strengthening of international humanitarian law. In its development cooperation, Switzerland supports actions of prevention of violence against women forming part of various bilateral projects (e.g. with Mozambique, Russia and Tajikistan) as well as of several humanitarian aid projects.

113. Furthermore, Switzerland is working to achieve the cessation of sexual mutilation inflicted on girls and women. Such practices constitute violations of human rights and are prejudicial to the victims' health. Switzerland supports specific projects in particular countries as well as the activities of international organizations directed against these practices.

Measures in the field of the law governing aliens and the right of asylum

114. With regard to reviews of projects in the field of the law governing aliens, see paras. 152 and 581 below.

115. In 1995, the *Federal Office for Refugees* issued directives on procedures for dealing appropriately with the growing number of asylum applications emanating from women who had suffered sexual violence. According to these directives, every woman has the right to an independent asylum procedure even if she is accompanied by her husband or other members of her family. For this reason, women applying for asylum must be questioned alone. Under article 6 of Asylum Ordinance No. 1,[67] female and male asylum applicants are questioned by a person of their own sex in all cases where specific information or the situation in the country of origin suggests that these persons have suffered persecution on account of their gender. Traumatized women are questioned by female officers trained in questioning persons who have

[67] Ordinance No.1 of 11 August 1999 on asylum procedure, RS 142. 311.

suffered persecution of that nature. Lastly, detailed information on each country of origin describing the cultural, social and historical context of *relations between the sexes* in the countries concerned is prepared for the attention of the responsible authorities. Pursuant to a parliamentary intervention, the Federal Office for Refugees is currently drafting a report on the situation of women in the asylum procedure. The report, which will analyse in detail the importance given in the Swiss asylum procedure to motives for becoming refugees that are specific to women, should be approved by the Federal Council before the end of 2001.

116. For several years past, the Federal Office for Refugees has supported the Swiss Red Cross therapy centre for male and female victims of torture. However, this centre deals in principle only with persons whose stay in Switzerland is assured, i.e. mainly persons having refugee status.

Awareness-raising and in-service training

117. It is of crucial importance that all persons and services called upon to deal with violence against women in their day-to-day activities (in areas such as the right of asylum, police, justice, assistance to victims, etc.) should be made aware of this problem and should receive in-service training. The Federal Office for Refugees, the decision-making body in asylum matters, has accordingly developed training programmes for staff required to question asylum seekers and to decide on applications claiming persecution due to the applicant's gender. Courses are also provided on dealing with traumatized asylum seekers of either sex.

118. In its courses for staff being sent on mission to conflict or crisis areas, the Federal Department of Foreign Affairs (DFAE) includes training modules that deal with social relations between the sexes and are designed to enhance awareness of the problem of violence against women. DFAE endeavours to maintain a gender balance in groups of staff sent to intervene in conflict or crisis areas, if only in order to ensure that greater attention be given to the particular situation of women.

119. In 1992, the Federal Office for Gender Equality broached for the first time the subject of violence against girls by addressing a travelling exhibition entitled "An Illusory Safety" to the public at large and thus helping to lift the veil from a social phenomenon as widespread as it is repressed in public consciousness.

Prevention of violence within the couple

120. In May and June 1997 the Swiss Conference of Gender Equality Delegates conducted an extensive information and awareness-raising campaign entitled "A Stop to Violence against Women within the Couple" using TV spots, prospectuses and booklets to alert the public at large to the extent and forms of violence and to possibilities of action by directly or indirectly concerned individuals. A central telephone number offering advice and more detailed information to specialists and other persons concerned was provided throughout the campaign. The media participated in the campaign with numerous information broadcasts and articles. In the regions, the national campaign was accompanied or followed by events and activities organized by local women's organizations, equality offices and shelters for battered women.

121. In the summer of 2001, the National Council approved a parliamentary initiative concerning protection against violence in the family and the couple. The initiative calls for the drafting of a Federal act to protect women victims of violence by allowing persons committing violent acts to be immediately expelled from the family home and banned from re-entering it for a certain period.

Measures adopted by the cantons

122. All the cantons have set up the advice centres required under the Assistance to Victims of Offences Act. The city cantons, in particular, have also set up *specific services* to advise and assist victims of sexual and domestic violence or are supporting private initiatives to that effect. Many cities (Aarau, Berne, Bienne, Thun, Basel, Fribourg, Geneva, Chur, La-Chaux-de-Fonds, Lucerne, Schaffhausen, St.Gall, Lausanne, Zurich, Winterthur) have opened *women's houses* subsidised by the public authorities where women and children victims of violence in the home can find provisional shelter. The demand is strong and many of these institutions are grappling with excessive occupation rates and financial difficulties.

123. Many cantons and some of the cities participated actively in the "A Stop to Violence" campaign and have adopted many other measures in this field. Many cantons have launched research and intervention projects aimed at reducing violence in the home and creating an efficient network of potential helpers in this field. The canton of Basel City, for example, has developed since 1996 an intervention strategy involving its various specialized departments as part of national research programme No.40 "Day-to-day violence and organized crime". Ongoing pilot projects are receiving scientific support and are being scientifically monitored. The goal is to establish a round-table uniting men and women representatives of the police, the judicial authorities and assistance centres, to provide booster training to the staff concerned, and to develop programmes of education for the perpetrators of violent acts. Several studies and surveys have been carried out as part of this work, e.g. on the day-to-day behaviour of the police and on the possibilities and limitations of police and penal intervention in cases of violence within the social fabric of neighbourhoods. A project against male violence in Zurich tackles the problem of men's violence in the home and develops appropriate intervention models. However, the long-term funding of these projects is not yet assured.

124. Lastly, many cantons are tackling the question of violence in general and violence against women in particular in their training courses for the health professions, social services, police and municipal staff called upon to deal with asylum seekers, violence problems being particularly rife in those fields.

Non-governmental initiatives

125. The Swiss population's growing awareness and the growing number of measures taken by the public authorities must be credited essentially to the activities of the feminist movement and women's organizations. In the 1970s, private initiatives were responsible for the creation of many shelters for battered women, emergency assistance services for rape victims, advice centres, emergency telephone numbers for victims of sexual exploitation, and meeting places for young women. The women staffing these institutions worked almost exclusively on a voluntary basis and most of them are still doing so. To this day, the public authorities grant

only partial funding to these private projects and programmes (see also para.122 above).

126. The MIRA association, founded jointly by several youth organizations, devotes itself to the prevention of sexual exploitation of children and young people in leisure associations and organizations. It seeks to enhance awareness of the subject among both women and men and offers advice and training.

127. In the past few years men's organizations have also begun to be involved in activities designed to promote gender equality and to reduce male violence against women. Advice centres for men have been set up in several cities. They offer counselling to affected persons and, in particular, help in preventing violence within the couple. Their goal is to make men aware of their responsibilities and encourage them to remain non-violent in conflict situations.

Article 5 of the Convention – prevention and elimination of stereotyped roles for women and men

128. In Switzerland, as elsewhere, society continues to allocate different roles to men and women and to boys and girls. Such patterns are difficult to eliminate. The presence of women in many fields – employment, political life, the sciences, culture and sport – is still not accepted as a matter of course. Women who choose occupations or roles traditionally set aside for men, or who achieve prominent positions, face many prejudices and obstacles. Similarly, men have difficulty in achieving recognition in occupations traditionally held by women. As for women working in the traditionally feminine sectors, they earn relatively little and have fewer prospects of promotion. Without realizing it, schools and charities often promote the traditional distribution of roles. The media and advertising often disseminate stereotyped images of women and men, thus helping to perpetuate traditional roles and to deny the diversity of roles being performed by women and girls in real life (see para. 133 below).

129. The Confederation and the cantons have adopted *various measures* towards the elimination of stereotypes. An important step in this direction was accomplished as a result of the *review of Swiss marriage law* in 1988 (see para. 60 above and paras. 537, 567 and 591 ff below). The old marriage law was based on a strict distribution of roles between the spouses, placing the husband at the head of the family and making the wife responsible for keeping house. The marriage law in force today no longer prescribes the manner in which relationships and roles must be apportioned between the spouses. On the contrary, husband and wife must decide jointly on the contribution to be made by each, in particular as regards financial upkeep, work in the home, care of children and assistance given by one spouse to the other in his/her profession or enterprise (art. 163 CCS).[68] In particular, article 159, paragraph 2 CCS requires the spouses to work jointly towards the prosperity of their union and to take joint care of their children.

130. Some efforts are being undertaken at Federal level to investigate existing prejudices and to inform and alert the public. Between 1993 and 1998, the National Fund for Scientific Research conducted a programme entitled "Women, law and society: the roads to equality" (PNR 35). Projects under this programme have

[68] Swiss Civil Code of 10 December 1907 (CCS), RS 220.

greatly contributed to *research on prejudices and their repercussions in society, politics and law.*

131. The Federal Bureau for Gender Equality (BFEG), as well as cantonal and communal equality offices and committees, have executed many projects involving, in particular, poster campaigns and the dissemination of information booklets and teaching aids in various areas of employment, education and politics.

132. The Federal Commission for Women's Issues (CFQF) has also carried out information work through various publications and surveys. In its report entitled "Biographies and roles", issued as far back as 1982, it proposed an extensive catalogue of measures to be taken with a view to helping to eliminate the traditional stereotypes that stand in the way of equal opportunities for women and men. In 1987 it published a survey of the obstacles to gender equality in a report entitled "A few achievements ... but not many changes? The situation of women in Switzerland".

133. The way in which women are represented and gender issues are treated in the mass media has a lasting influence on the image of women in the mind of the public. The tendency of the media to emphasize the sexual aspects of violence against women while neglecting the social and political background is an obstacle to the serious consideration of the causes of violence and possibilities of combating it. In any event, only a very small number of full statistical and scientific investigations on the subject of women and the media have been conducted in Switzerland.[69] The *Swiss Commission on Fair Practices in Advertising* has issued some very useful directives on the prevention of the use of degrading female stereotypes in advertising. These directives deserve to be better known and more strictly observed.

134. Socialization of young people by gender is of particular importance in this connection. The many measures adopted by the Confederation and the cantons to eliminate stereotyping are cited in detail under each of this report's main subject headings, in particular education and training (see para. 249 below). As regards out-of-school activities, certain non-governmental organizations such as the Swiss Council for Youth Activities (CSAJ) or the Swiss Scouting Movement have endeavoured to eliminate gender stereotyping, to provide young girls with the space needed for their self-fulfilment and to enhance their standing and self-confidence (see paras. 295 ff and 538 ff below).

Article 6 of the Convention – Abolition of traffic in women and exploitation of prostitution

A. Prostitution and traffic in women in Switzerland

135. Traffic in women and prostitution, in particular traffic in foreign strip-tease artists and prostitutes, marriage by catalogue or video, and sex tourism practised by Swiss men, entailing as they do the sexual exploitation of women and children in the poorest countries, are matters of serious concern to Swiss public opinion.

[69] See Bettina Nyffeler, summary of study on the Federal elections of 1999: Média, politiques et parité. Analyse de l'offre d'information des télévisions et radios suisses à desserte nationale sous l'angle de la parité des sexes, à partir des émissions électorales diffusées en prélude aux éléctions fédérales 1999, prepared on behalf of the Swiss Broadcasting Company and CFQF.

136. In principle, Swiss women and men as well as foreign women and men in possession of a domicile authorization are not punishable if they prostitute themselves. However, cantonal laws impose restrictions upon the exercise of prostitution. According to approximate police estimates, the number of persons who prostitute themselves in Switzerland stands at about 14,000. These persons are often in a difficult social and financial situation. And even those women who are reduced to offering their "sexual services" voluntarily are often involved in a relationship of very strong dependence on a procurer, to whom they are obliged to remit their income. Women who prostitute themselves in order to finance their drug consumption are exposed to particular risks, as are foreign prostitutes who, holding only a short-term residence permit, do not have the right to prostitute themselves "legally".

137. *International traffic in women* is also a matter for concern. Many women from the poorest regions of Europe, Africa, South America and Asia come to Switzerland with bogus offers of work or promises of marriage supplied by criminal organizations. Others are kidnapped or bought. Once in the hands of the traffickers, they are forced to prostitute themselves or to perform slave labour and are massively exploited. Traffic in human beings in general and women in particular, as well as exploitation of prostitution, are major components of organized crime. An international network of criminals will combine legal activities with illegal ones, e.g. as recruiting women in their countries of origin, supplying forged documents, transporting them and placing them in "jobs". Since criminal groups generally operate on the principle of division of labour, it is difficult for the criminal justice authorities and the police to apprehend all the persons involved in a particular case. The prospect of huge benefits and the relatively low risk of being discovered and convicted have contributed towards the development of this form of criminal activity in recent years. In 1998, Swiss courts pronounced 30 convictions based on penal provisions relating to the exploitation of prostitution and 4 convictions for traffic in human beings.

138. One of the few possibilities of working legally in Switzerland open to women from Eastern Europe or the third world is to work as *cabaret dancers*. They receive a special work permit (see paras. 148 ff and 578 below), which authorizes them to work in Swiss cabarets for a maximum of eight months a year. According to statistics released by the Federal Aliens Office, there were 1,694 cabaret dancers in Switzerland at the end of December 2000; of this total, 66.2% came from European countries, 8.4% from Africa, 12.6% from the Caribbean region, 7% from South America and 5.8% from Asia. Employers are not allowed to employ dancers as go-go girls. Despite this prohibition, the work of many of these dancers really consists in getting clients to order alcoholic drinks and in prostituting themselves. Since the dancers have to pay the high costs of transport and placement out of their own pockets, they are often heavily in debt. In order to pay off their debts they often resort to illegal prostitution.

B. Measures adopted at various levels by the Confederation and the cantons

Legal and police measures

139. For measures aimed at the elimination of traffic in children, child prostitution and child pornography, see the initial report of Switzerland under the Convention on the Rights of the Child, 1 November 2000, paras. 354 ff, 744 ff and 762.

140. As mentioned earlier, prostitution is not punishable in Switzerland. However, the Swiss Penal Code does punish the exploitation of prostitution and traffic in women. In its revised version of 1992, article 196 CPS punishes by at least six months' rigorous or ordinary imprisonment anyone who engages in traffic in human beings "in order to satisfy the passions of others". Article 195 CPS punishes by a maximum of ten years of rigorous or ordinary imprisonment anyone who incites a minor to prostitution, incites another person to prostitute himself/herself by taking advantage of a dependence relationship or with the aim of deriving an advantage as to property rights, infringes the freedom of action of a prostituted person, or maintains a person in prostitution.

141. The review of criminal law on offences against sexual integrity carried out in 1992 was principally concerned with freedom of self-determination in sexual matters. The constituent elements of offences connected with sex trafficking were therefore given a rather broad definition, which gave rise to some questioning of the underlying legal doctrine. Indeed, in the absence of any case law of the Federal Supreme Court, some important questions concerning the interpretation and delimitation of articles 195 and 196 remain undecided to this day. In some of its recent judgements, the Federal Supreme Court has analysed, in particular, the concept of a prostitute's freedom of action.[70] In a recent ruling the Federal Supreme Court gives great prominence to the question of self-determination of prostitutes, emphasizing that purely formal consent on the part of a prostitute to work in a brothel cannot be considered an act of self-determination in view of the strong dependence ties of, in particular, foreign prostitutes whose presence in Switzerland is illegal. In certain circumstances, the constituent elements of traffic in human beings may thus be present even where the prostitute has given her consent.[71] The two Criminal Code provisions in question undoubtedly cover situations in which women are sold as goods and are compelled to engage in prostitution and exploited against their will. Other forms of traffic in human beings, involving, for example, foreign workers, are punished under Title 4 of the Criminal Code (crimes and offences against liberty, arts. 180 ff).

142. Switzerland has long-standing international commitments in this area. It has ratified several conventions relating to the elimination of traffic in women.[72]

143. On 23 June 2000, the National Council adopted, in the form of a (non-binding) postulate, a motion calling for an extensive programme of protection of victims of traffic in women and, in particular, for a new definition in criminal law of reprehensible traffic in women covering all existing forms of traffic in women. The Federal Council requested the Federal Department of Justice and Police to set up an interdepartmental working group for the purpose of deciding, in the light of international conventions and of the laws of neighbouring countries, whether it is

[70] ATF 125 IV 269; 126 IV 76.

[71] ATF 126 IV 225.

[72] International arrangement of 18 May 1904 to ensure effective protection against the criminal traffic known as the white slave trade, RS 0.311.31; International Convention of 4 May 1910 for the Suppression of the White Slave Traffic; RS 0.311.32; International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, RS 0.311.33; International Convention of 11 October 1933 on the Suppression of the Traffic in Women of Full Age, RS 0.311.34; Slavery Convention of 25 September 1926, RS 0.311.37; Supplementary Convention of 7 September 1956 on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, RS 0.311.371.

necessary to amend the Swiss Penal Code, what measures are needed to ensure better protection of victims of traffic in women, and whether additional advice centres need to be established.

144. As a general rule, perpetrators of offences are subject to prosecution only if there are victims willing to testify. For a variety of reasons, this is very rarely the case. The women concerned rightly fear reprisals. Moreover, they distrust the authorities; if they are in Switzerland illegally, they are generally expelled at once and return to their country to be branded as rape victims and often marginalized; as a result, the investigating judicial authority can no longer produce any witnesses in Switzerland. The motion (cf. para. 143 above) requests, in particular, that foreign women be granted residence rights for the duration of the proceedings concerning them. Even now, the cantonal aliens' police authorities can already grant short-term residence permits in cases of severe distress (cf. para. 579 below). Women victims of sexual exploitation or of slave-like labour conditions can remain in Switzerland under such circumstances. But that is not a right.

145. In Switzerland's federal system, criminal prosecution and police measures are, in principle, the responsibility of the cantons. The Confederation has established a central Office for the Elimination of Traffic in Human Beings, whose task it is to centralize information on this subject and to coordinate inter-cantonal and international investigations. Furthermore, the Federal Office of Police has set up a computerized system of recording information concerning traffic in human beings. In the year 2000 the Bureau of Traffic in Human Beings of the Federal Office of Police prepared a report on crime connected with *prostitution and traffic in human beings in Switzerland*. It proposes that the authorities responsible for bringing criminal prosecutions be made more aware of the need to combat these forms of crime. According to the report, police investigations should be expanded in both number and scope and should focus on groups of criminals (the "string-pullers"). It advocates improved collaboration between the Confederation and the cantons and the establishment of a joint platform for cooperation between the penal authorities and non-governmental organizations active in that field.

Awareness-raising activities of the working group on "Traffic in women, sex tourism and prostitution"

146. In 1990 a group working under the auspices of the Federal Bureau for Gender Equality began to prepare and execute an awareness-raising campaign. In particular, it explained the problem to Swiss missions in the cabaret artists' countries of recruitment and in countries of destination of sex tourists from Switzerland. Representatives of the working group also provide information on the causes and context of traffic in women and prostitution within the framework of training programmes for diplomats and chancellery staff.

147. An information leaflet discussing the context and causes of sex tourism was published as part of an extensive awareness-raising campaign and disseminated in chemists' shops, medical surgeries and vaccination centres. This leaflet met with strong interest when presented to the press and the general public in 1992.

Measures for the protection of foreign cabaret dancers

148. In 1995, in connection with its annual review of the ordinance setting a limit on the number of aliens in the country, the Federal Council decided to change the rules governing the possibilities of recruitment and admission of foreign cabaret dancers. The intention was to improve the protection of these artists, who mainly come from countries outside Western Europe, and to reduce or at least stabilize the number of permits issued. The maximum duration of stay remains fixed at eight months per calendar year.

149. In particular, the Federal Council enjoined the cantonal authorities to limit, from 1996 onwards, the number of short-term residence permits issued to cabaret dancers. The authority granting the permits must demand to see a standard contract precisely describing the nature of the expected activity, specifying the work schedule and indicating a suitable wage. This new standard contract introduces a number of improvements as regards social security. Swiss missions and cantonal aliens' police authorities must study requests for entry into Switzerland with particular attention; in order to obtain a visa, cabaret dancers must apply to the Swiss mission in person and must be in possession of the obligatory standard work permit. Lastly, the competent cantonal authorities are expected to conduct regular on-site inspections to check whether the regulations are being respected.

150. The Federal Bureau for Gender Equality and the Federal Office for Aliens issue *information leaflets* telling the cabaret dancers about their rights and indicating advice services to which they may apply in case of need. These information leaflets, which have been translated into the languages of the artists' main countries of origin, are regularly handed to them before entry into Switzerland. Prior to granting a visa, Swiss missions receive the applicants in person so that they can alert them to the potential dangers and risks of their intended activities and can explain the legal situation. When granting the short-term residence permit, most cantons also distribute other information leaflets listing the local services and private associations available for consultation.

151. The Federal Department of Foreign Affairs takes part in OSCE efforts to eliminate traffic in women and supports specific projects designed to help specialized NGOs and to bring about the amendment of the relevant laws in selected countries of origin and of transit. In addition, the Directorate for Development and Cooperation supports international organizations engaged in the struggle against traffic in women and sex tourism. Lastly, Switzerland participates in the activities of the Council of Europe against traffic in human beings and in the European Union's STOP programme.

Measures taken against smuggling of persons

152. Traffic in women falls partly within the more general context of smuggling of persons. Measures adopted by the Federal Aliens Office to eliminate this form of crime have repercussions in the field of traffic in women. Efficient combating of smuggling activities calls for a combination of several measures and methods, in particular the following:

- An efficient system of information exchange;
- Eloquent situation analyses and risk profiles that can be used in practice to enable all authorities responsible for migration issues to act in an efficient manner;
- Visa policies and practices that are consistent and adapted to the circumstances;
- Systematic implementation of existing legal possibilities;
- Effective and global international cooperation.

The Federal Aliens' Office is making efforts to improve the situation in all these areas. The new draft Aliens Act, which will probably be placed before Parliament at the start of 2002, provides for various measures in the field of criminal law. The draft extends the penal scope of the Act and introduces minimum penalties for activities involving cross-frontier smuggling of human beings for purposes of personal enrichment. Leaving a country illegally in violation of provisions relating to entry into the country of destination will henceforth also be punishable under the heading of smuggling of persons. Lastly, deceiving the authorities will be made punishable, which ought to discourage fictional marriages.

153. Switzerland attaches great importance to international cooperation as a decisive element in the struggle against smuggling of human beings. Accordingly, it participated in the drafting of a new United Nations convention on the prevention of organized crime and in the preparation of additional protocols relating to traffic in human beings and to the activities of smugglers of persons. It is also endeavouring to improve cooperation with European police authorities (under the Europol Convention, in force since 1998) and with the authorities of neighbouring States (trans-frontier cooperation in police matters).

Article 7 of the Convention – Elimination of discrimination in political and public life

A. General right to vote and to be eligible for election (art. 7. para. 1 of the Convention)

154. The right of women to vote and to be eligible for election was introduced at the national level in Switzerland only in 1971. Under the Swiss system, any decision that modifies the constitutional provisions, as was the case with the introduction of women's right to vote and to be eligible for election, must be approved by a double majority of the people and the cantons. Article 136, para. 1 Cst reads as follows: "All Swiss citizens of 18 years of age (...) shall have political rights in federal matters. All shall have the same political rights and obligations."

155. Some cantons granted women the right to vote and to be eligible for election in cantonal affairs before 1971 (Vaud and Neuchâtel in 1959; Geneva in 1960; Basel City in 1966; Basel Land in 1968; Ticino in 1969; Valais, Lucerne and Zurich in 1970). The last canton to follow the others (in 1991) was Appenzell Inner-Rhoden, whose *Landsgemeinde* (citizens' assembly exercising direct democracy) had previously rejected votes for women three times. In 1990, the Federal Supreme Court decided, on the basis of the constitutional principle of gender equality adopted in 1981, that article 74, para. 4 oCst, according to which it is a matter for the

cantons to regulate cantonal elections and popular votes, did not authorize the cantons to contravene the equality principle.[73]

156. Women's *participation* in popular votes and elections is generally lower than men's. The difference between participation rates is, however, becoming progressively smaller, diminishing from an average of 16% in the first decade following the introduction of women's voting rights to 12% in the second decade. This development is, however, due less to women's increasing mobilization than to the growth of abstentionism among men. The difference is less striking in the case of participation in popular votes.

157. Among the factors that influence the voter's choice, age and educational level play a more important role than gender. Regular surveys of the choices of men and women voters at federal level show, however, that gender differences do exist. In the 1970s women voted more conservatively than men. Since the mid-1980s, an ecological trend in the women's vote has become perceptible, and traditional attitudes in areas such as security, aliens policy or the economy tend to be supported a little less strongly by women than by men.[74]

B. Women and men exercising public and political functions

The present situation: under-representation of women

Women in Parliament

158. While women account for 54% of the electorate, i.e. the majority, they currently hold less than 25% of seats in one-half of the cantonal Parliaments and in the Federal Parliament. Switzerland thus occupies 21st place and stands below the average for Europe and for OSCE countries.[75]

Year	*National Council (200 members)*	*State Council (46 members)*
1971	10 (5%)	1 (2.2%)
1975	15 (7.5%)	–
1979	21 (10.5%)	3 (6.5%)
1983	22 (11%)	3 (6.5%)
1987	29 (14.5%)	5 (10.9%)
1991	35 (17.5%)	4 (8.7%)
1995	43 (21.5%)	8 (17.4%)
1999	47 (23.5%)	9 (19.6%)

159. In the National Council, differences between the cantons are considerable. One of the two seats for the canton of Appenzell Outer Rhodes is held by a woman. In the canton of Zurich there are 14 women for 34 elected members (41%). The three cantons with the largest populations and hence the largest number of seats (Zurich, Berne and Vaud) account for more than half of the National Council's women members. Nine of the smaller cantons holding a relatively small number of seats have no women representatives in the Federal Assembly (either the National

[73] ATF 116 Ia 359.

[74] See, in this connection, contributions to the work by Hanspeter Kriesi (ed.), Schweizerisches Jahrbuch fuer politische Wissenschaft 34 (1994), Frauen und Politik, Berne 1994.

[75] Inter-parliamentary Union (www.ipu.org), situation as of 15 July 2001.

Council or the State Council). Differences also exist between the language regions. In 1999, the German-speaking regions elected the largest number of women to the Federal Assembly in both absolute and relative terms (26%). The proportion in French-speaking regions is markedly smaller (19%). The canton of Ticino, long represented exclusively by men, elected a woman to the National Council in 1999 (as well as seven men, a proportion of 12.5%).

160. There are also marked differences between political parties. In the first few years following the introduction of women's right to vote and to be eligible for election in Federal and cantonal parliaments, right-wing and left-wing parties had approximately the same number of women representatives. In the 1980s the situation changed. According to 1999 statistics, the number of women in the ranks of the left-wing parties was relatively high (Swiss Socialist Party 39%, The Greens 67%). In two of the governmental right-wing parties, PRD and PDC, women accounted for, respectively, 21 and 23% of elected representatives, 1999 being their most successful year in that respect. In the UDC the number of women elected has stagnated, this being reflected in a markedly reduced percentage (7%) considering the increase in the number of seats allocated to that party. None of the non-governmental right-wing parties sends a woman to the National Council. Of the 47 elected women members, 20 are socialists and 6 are ecologists, despite the fact that those two parties hold less than a third of seats in the National Council.

161. In the Council of States (Senate), where each canton is represented by two members (or each half-canton by one member), the proportion of women had barely reached 20% at the time of the 1999 elections. This means that only 8 of the cantons and 6 half-cantons have at least one woman among their elected senators. The canton of Geneva is represented by two women. The distribution is not the same as in the National Council. Of the nine women senators, eight belong to bourgeois parties, which form a strong majority in the Council of States (38 of 46 seats). There is only one Socialist woman senator. Four of the women senators come from French-speaking Switzerland.

162. The proportion of women elected to cantonal parliaments has developed in the same way as at Federal level. In the middle of 1999 women accounted, on average, for 24% of the total. Today, they hold 36% of parliamentary mandates in the canton of Geneva and 25 to 30% in the densely populated cantons, but less than 20% in certain other (especially rural) cantons. In the canton of Ticino only 10% of cantonal parliament members are women. The distribution by parties is very similar to that in the National Council, with a relatively high proportion (42%) in the left-wing parties, a far smaller one in the government right-wing parties (17%) and less than 10% in bourgeois parties not represented in the government.[76]

163. Women are more strongly represented in communal parliaments. Already in 1981, their rate of representation at communal level was more than 5% higher than at the federal and cantonal levels. Since then, this advance has increased further, if only slightly.

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[76] See, on this question, Werner Seitz (Federal Statistical Office), Les femmes et les élections au Conseil national de 1999. Evolution depuis 1971, Neuchâtel 1999; UNIVOX Research Programme (ed.), Frauen in der Politik, in : UNIVOX Teil II A Staat 1999, Zurich 1999; Thanh-Huyen Ballmer-Cao / Lea Sgier, Die Wahlbeteiligung in der Schweiz: eine geschlechtsspezifische Untersuchung anhand der Nationalratswahlen 1995, in: Schweizer Wahlen 1995, Berne 1998, p. 101 ff.

164. Two basic factors characterize the chances of women candidates to be elected. First, women are under-represented on lists of candidates. Second, their chances of actually being elected are less good, the proportion of women elected being smaller than that of women appearing on the lists. The number of women candidates for election to the National Council, which had risen steadily up to 1995, became stationary in 1999. Here again, significant differences between cantons and political parties are to be noted. While the proportion of women candidates in the canton of Basel City is 44%, in Ticino it is only 16%. The Greens are in the lead with 56% of women on their lists of candidates, the corresponding figure for the non-governmental right-wing parties and the UDC being less than 25%.

165. A comparison by gender between the proportion of elected representatives and that of candidates shows that men clearly stand a better chance of election. Whereas the men's election success rate has steadily remained above average since 1971 (110–120), the women's rate has shifted from 30 to 70.[77] In 1999 it still stood at 1.7 times below that of men. Only the women ecologists have shown an election success rate higher than their male colleagues. In all other parties, the women's election success rate was distinctly poorer; in the UDC, the men's success rate was four times higher than the women's.

166. The fact that women stand fewer chances of election is due to a variety of causes. Women are at a disadvantage from the outset because, overall, they hold lower positions than men in employment and in economic life. Secondly, family obligations often leave them less time to develop a political career. And, finally, they have practically no examples or traditions to claim as their own in making their voice heard in political life. Gender differences in the type and amount of media coverage also play an important role.[78]

167. Members of the National Council and of most cantonal parliaments are elected by proportional representation. In principle, this system has the necessary characteristics to facilitate women's entry into political institutions. In most of the cantons, a candidate (man or woman) can appear on the same list twice ("plural candidacy"). Moreover, members of the electorate can compose their own lists by choosing candidates (of either sex) from different parties. But the impact of this system on women's chances of being elected is variable. While the proportion of women elected has risen in step with their representation on the candidate lists of left-wing parties, the same is less true of the centre and right-wing parties. The system described is therefore a source of both *opportunities* and *risks* for women candidates.[79]

168. The *federalist structure* of Swiss political life entails advantages as well as drawbacks. Whereas the cantons of Vaud, Neuchâtel and Geneva gave women the right to vote as far back as 1959-1960, the two half-cantons of Appenzell avoided

[77] An election success rate of over 100 means a number of elected candidates greater than average (as compared with the number of candidates); a rate of less than 100 means a number of elected candidates below average (as compared with the number of candidates).

[78] See Bettina Nyffeler, op. cit. (footnote 69).

[79] In this connection, see e.g. Tanh-Huyen Ballmer-Cao, Postface: Femmes et politique in: Hanspeter Kriesi (ed.), op. cit. (footnote 74); Werner Seitz (Federal Statistical Office), op. cit. (footnote 76); Werner Seitz (Federal Statistical Office, Beaucoup d'appelées, peu d'élues. Les femmes et les élections au Conseil national de 1995 in : Question au feminin (1996), No.1, p. 29 ff.

doing so at the cantonal level until 1990. The federal structure is advantageous in that it multiplies the number of political mandates; cantonal parliaments alone total 3,000 seats. The existence of a large number of political mandates generally helps categories that are under-represented – or not represented at all – to obtain access to political life.

Women in government

169. The first woman elected to the Federal Government, a collegiate body of seven members, was elected thirteen years after the introduction of votes for women in 1971. She directed the Federal Department of Justice and Police from 1984 to 1989. A woman has been at the head of the Federal Department of the Interior since 1993, and the Federal Department of Justice and Police is again being directed by a woman since 1999. Thus the Federal Council has had two women members since 1999.

170. The proportion of women in cantonal governments has progressed only very belatedly and slowly. The first woman member of the Council of States was elected (in Zurich) only in 1983. By the end of 1995, 19 women (and 147 men), i.e. 11%, were holding elective posts in cantonal governments. By 1999 the number of women members of the Council of States had reached 33, which means that women today hold 20% of the seats in cantonal governments. At present there are two women members in the State Councils of 8 cantons (three in the cantons of Zurich and Berne), while five cantons (Appenzell Inner Rhodes, Schwyz, Nidwald, Schaffhausen and Valais) still have all-male governments.[80]

171. The situation in communal governments is similar.

Women in the administration

172. At the end of 1999 women accounted for 23.2% of the Confederation's general administrative staff. They are particularly under-represented in influential positions, i.e. in middle-ranking and senior executive posts. In the section between wage group No.30 and the 'unclassified" group, they currently account for only 6.5%, which, however, represents an increase of 1.3% over 5.2% in 1996. In wage groups 24 to 29 women today account for 12.5% as against 9.3% in 1996, and in wage groups 18-23 for 19% as against 15.2% in 1996. The rise in the numbers of staff in training (from 18.1% in 1996 to 33.9% in 1999) is to be welcomed.

173. Few *cantonal administrations* can provide concrete figures concerning women's representation at various levels of administrative responsibility. Such data as are available, in so far as they are comparable in terms of the criteria employed, suggest the same situation as at federal level; the proportion of women is generally greater in junior posts and smaller in senior ones, where it falls well below the level of male staff. The situation in the administration of the canton of Berne is probably characteristic. At the end of 1998, 30.5% of male staff were employed in the lower wage categories, as against 58.6% of women (almost double); in the higher wage categories, the situation was reversed (38% of men against only 19% of women, or

[80] See Urs Meuli / Andreas Ladner, Frauen in den Gemeindeexekutiven 1988-1998, Zurich 2000; Federal Statistical Office, La représentation des femmes dans les exécutifs communaux en 1997, Berne 1997.

one-half). While three cantonal administrations (Appenzell Inner Rhodes, Basel Land and Nidwald) have no women at all in senior posts, women's representation in such posts is below 10% in the majority of other cantons (Aargau, Berne, Basel City, Fribourg, Grisons, Jura, Lucerne, St.-Gall, Solothurn, Schwyz, Thurgau, Ticino, Valais). In only five cantons (Geneva, Glaris, Obwald, Schaffhausen and Zurich) are there more than 10% of women in senior administrative posts.[81]

174. The situation is similar in *the judiciary*. According to 1990 statistics, there were 301 women judges in Switzerland out of a total of 1,442 (21%). The proportion of women in the Federal judiciary system is thus below average, there being only 5 women among the 30 full-time members of the Federal Supreme Court and 3 among the 30 part-time Federal judges. Two women are members of the Federal Insurance Tribunal (9 judges in all), two other women being part-time members. Out of 102 persons employed in the Registry of the Federal Supreme Court or as personal support staff of Federal judges, 25 are women. The Federal Insurance Tribunal employs 14 female and 22 male registrars. The situation is no better at cantonal level. However, women have achieved parity or are actually in the majority in the judiciary systems of a few cantons owing to the composition of those cantons' juvenile courts and, to a lesser extent, of their social insurance courts.

Women in the army and other public services (with special reference to Switzerland's reservation concerning women's exclusion from combat service)

175. Women's service in the Swiss army is optional (art. 59, para. 2 Cst.) while for men it is compulsory. Women can be members either of the army or of the Red Cross Service. This service (SCR), which is dependent on both the army and the Red Cross, constitutes a special case. Its membership is limited to women who, by reason of their professional activities in civilian life, choose to support the army's medical service. The voluntary nature of women's military service is reflected in the relatively low number of women enlisting in the army proper. Women are also in the minority in the Swiss army's professional contingent. Women doing military service have been incorporated in the army de jure since 1995 and have, in principle, the same rights and duties as their male colleagues (art. 3 of the Army Act).[82] Since 1995, men and women recruits have enlisted together. Because of the professional skills of members of the SCR, their training and very brief professional re-training take place at the SCR's own school in the Moudon army camp. Women are more strongly represented in training courses for officers and NCOs (50% of female recruits as against 25% male recruits in the former case, approximately 50% as against 15% in the latter). The same trend is reported by the SCR.

176. Today, women can choose between armed and unarmed service. Women doing military service are issued with the same weapons as men. The Federal Council has, however, upheld the principle that women cannot exercise duties that *necessitate* the use of arms. In other words, the infantry, motorized regiments, artillery regiments and anti-aircraft defences remain closed to women. The reason for Switzerland's reservation to article 7 of the Convention is the continued exclusion of women from

[81] Gender Equality Office of the canton of Berne, Transparence – Faits et chiffres sur l'égalité dans l'administration cantonale, No.4, January 2000; for a further cantonal example see Sabine Littmann-Wenli / Dora Makausz (Equality Office, canton of Zurich), Frauen in der Verwaltung des Kantons Zuerich, Zurich 1994.

[82] Federal Act of 3 February 1995 on the Army and Military Administration (LAAM), RS 510.10.

combat service in the Swiss army. Under the "Army XXI" reform plan women are to have access to all parts of military service.

177. On 6 April 2001 the General Secretary of the Federal Department of Defence, Protection of the Population and Sports approved the "Women and Security Policy" document drawn up by the new National Security Cooperation unit. The document contains some 20 projects designed to make the country's security policy better known to women and to inform women of the opportunities for participation and decision-making open to them in that field. Some of these encouragement programmes have already started (e.g. the "Women Military Observers" campaign, the creation of an international network of women active in the field of security policy composed of former female students of the Geneva centre for security policy, or an exhibition held in several Swiss cities demonstrating the importance of the commitment of women to peace and security). The role of women in security policy institutions and peace furtherance activities will also be enhanced.

178. Similarly, the civil defence service is compulsory only for men; women may join on a voluntary basis (art. 61, para. 3 Cst). Women who join have the same rights and duties as their male colleagues. The possibility of voluntarily joining the civil defence service is expressly mentioned in the civil defence directives. It is also available to foreign women. Under the basic document on the future organization of civil defence (produced in cooperation with partner organizations including the police, fire service, public health authorities and various technical departments), women and men in civil defence enjoy, in principle, the same opportunities.

179. In Switzerland, the local organization of *firefighting* is the responsibility of the cantons and communes. The Federal Supreme Court has had occasion repeatedly in the past decades to note that in many communes fire-fighting duties are obligatory for men only. As far back as 1986 it ruled that the inequality of treatment of women and men in respect of firefighting obligations was fundamentally contrary to the Constitution and was compatible with article 4, para. 2 oCst only in so far as firefighting duties require physical strength such as only strong young men possess and can have different repercussions on the reproductive health of women and men, respectively.[83] In subsequent decisions, the Federal Supreme Court went back on that ruling, arguing that in the light of article 4, para. 2 oCst the fact that more men than women possess the qualities required to perform firefighting duties is immaterial, especially since in most communes where firefighting service is obligatory, the great majority of men liable for such service prefer paying an exemption tax to discharging their duties. The Federal Supreme Court further deemed that there are generally enough volunteers to make obligatory service unnecessary. Persons liable for firefighting service, be they men or women, can generally obtain exemption by paying a tax, which women no less than men can be reasonably expected to do.[84] Reasoning along the same lines, the European Court of Human Rights judged a firefighting exemption tax imposed exclusively on men in the German Land of Baden-Wurtemberg to be unlawful, invoking the prohibition of forced labour (in particular, art. 4, para. 3 (d) ECHR) and of discrimination (art.14 ECHR).[85] The cantons have amended their firefighting laws accordingly in the last few years. The number of women in firefighting services has greatly risen since

[83] ZBI 88 / 1987 p. 306; see also ZBI 92 / 1991, p. 148.

[84] ATF 123 I 56.

[85] Schmidt Judgment of 18 July 1994, series A No.29-B, para. 28.

1995. In particular, women rescue workers have joined these services in many places.

Measures adopted to encourage women's participation in politics

180. In the past few years several Federal authorities have endeavoured to alert public opinion to the under-representation of women in the parliaments. The *Federal Commission for Women's Issues* has tackled the problem several times in its publications. In 1990 it published a report entitled "Take a seat, madam" highlighting the under-representation issue. It has also published an analysis of the role of the media prepared by women candidates in the National Council elections of 1995. In the run-up to the 1999 National Council elections, the Commission associated itself with women from the six political parties in publishing a manifesto calling upon the political parties to take active steps to ensure the election of a greater number of women. The manifesto stressed the essential role of the political parties in providing genuine election opportunities for women. Later, the Commission twice invited the political parties to inter-party discussions concerning the manifesto's implementation.

181. Also at the initiative of the Federal Commission for Women's Issues, the Federal Council set up, before the federal elections of 1999, an inter-departmental working group to consider new measures designed to increase women's participation in politics. The group reviewed the instructions issued to cantons, communes, schools, parties and all households in connection with the National Council elections. It expanded the circular the Federal Council had addressed to cantonal governments on the occasion of the elections of 24 October 1995 and the Federal Chancellery's guide for groups presenting candidates to include references to women's representation and to possibilities of promoting it in a target-oriented manner. The Federal Council also decided to conduct a pilot information campaign in three population centres with the dual object of promoting women's candidatures and of persuading voters to come to the polls in greater numbers. This campaign finally did not take place, Parliament having refused to approve the necessary credits.

182. The *Federal Statistical Office* has published the results of several surveys and has been compiling statistical data on the subject since 1971. Before the 1999 elections to the National Council it joined forces with the Federal Bureau for Gender Equality and the Federal Commission for Women's Issues in publishing a prospectus designed to draw attention to women's under-representation in politics.

183. Women "gender equality delegates" and the gender equality committees of certain cantons, as well as women's organizations, make regular efforts to alert public opinion to this problem. They too redouble their efforts in the run-up to elections, publishing and disseminating prospectuses, brochures, Internet sites, etc. (e.g. the cantons of Basel Land, Basel City and Vaud), organizing campaign round-tables, meetings with the media and training seminars for candidates of both sexes (e.g. cantons of Fribourg, Lucerne, Obwald and Valais) and adopting manifestoes or sets of measures (e.g. cantons of Basel Land and Zurich).

Measures adopted with a view to improving women's access to posts in the administration

184. The measures adopted by the Confederation and the cantons in their capacity as employers are described in paras. 354 ff below.

185. The year 1992 saw the introduction of *quotas* defining the representation of women and men, respectively, on committees and other organs of the Confederation having administrative or judicial responsibilities. The Ordinance on Committees[86] provides explicitly that there must be at least 30% women and 30% men on *extra-parliamentary committees* and on the Confederation's organs and missions. The object is to achieve gender parity. If a committee has fewer than 30% women or men members, the Federal Chancellery requests the competent Department to state the reason in writing. Replying to an ordinary urgent question, the Federal Council explained to Parliament in 1997 that the committees covered by the Ordinance had nearly reached the 30% target with a representation of the minority gender of 27.7%. The Federal appeals and arbitration committees are also expressly required to seek adequate and balanced representation of both sexes.[87]

186. Some cantons and communes have set similar goals with regard to women's representation on their extra-parliamentary and other committees by requiring a minimum percentage of women, generally 30% (e.g. Berne, Lucerne and Zurich) or an adequate women's representation (e.g. Basel Land, Obwald, Thurgau and Uri). Other steps taken towards that end consist in organizing courses specially for women with a view to encouraging them to put forward their candidacies for elected public posts (e.g. Fribourg, Valais) or in keeping political parties and other bodies entitled to nominate candidates regularly informed on the subject of women's under-representation and inviting them to nominate more women (e.g. Geneva, Lucerne, Schwyz). There are also a few isolated projects consisting in keeping lists of women wishing to serve on a committee or to take up some other form of public service ("women's pools") (Grisons, Lucerne, Obwald, Schwyz, Uri and Valais).

Political participation and women's quotas

187. Quotas are by no means a novelty in the Swiss political system. The Confederation and the multilingual cantons use several forms of quotas in order to ensure the participation of language minorities. Thus, a certain number of seats in the cantonal government are reserved for the language minority in the cantons of Berne, Fribourg and Valais. Moreover, certain posts and duties in government, the judiciary and senior administration at both Federal and cantonal level are allocated in the light of political, regional, language, and sometimes even religious considerations. Certain important directorial posts at Confederation level are allocated on the basis of a quota system that ensures a balance between regions and strengthens the representation of peripheral areas.

188. While the technique of women's quotas is widely used in order to compensate for women's under-representation in administration and the judiciary, as well as in

[86] Ordinance of 3 June 1996 on extra-parliamentary committees, governing bodies and missions of the Confederation (Ordinance on Committees), RS 172.31, art. 10.

[87] Ordinance of 3 February 1993 on organization and procedures of Federal appeals and arbitration committees, RS 173.31, art. 7, para. 2.

civil society and education, Swiss public opinion has been extremely wary of using it in politics.[88] All proposals to introduce such a system put forward and discussed in the Federal Parliament to date have been rejected by a clear majority. Two popular initiatives to that effect failed to obtain the requisite number of signatures within the prescribed time limit. The initiative entitled "For an equitable representation of women in the Federal authorities" ("Initiative of 3 March"), deposited in 1995, called for an equitable representation of women in all Federal authorities, in particular Parliament, Government, the administration, the Federal Supreme Court and the Federal Higher Schools. It proposed that the difference between the number of a canton's male and female representatives on the National Council should not be greater than one. Each canton would have elected one male and one female member to the Council of States and each half-canton a man or a woman member. At least three of the seven members of the Federal Council (the Executive) and at least 40% of Federal Supreme Court judges and deputy judges would have had to be women.

189. The Federal Council recommended the rejection of this initiative by Parliament and its submission to the nation without a counter-proposal. It took the view that, although the goal pursued might be legitimate, the initiative's acceptance would have unacceptable effects on electoral freedom and would harm the cause of equal treatment of men and women candidates. The Political Institutions Committee of the National Council then suggested, as an indirect counter-proposal, that the Federal Act on Political Rights be amended and a system of quotas introduced for lists of candidates of political parties seeking to be represented on the National Council (30% quotas for the next three elections). However, Parliament decided in 1999 to reject the "Initiative of 3 March" and to submit it to a popular vote without a counter-proposal. On 12 March 2000 the initiative was rejected by popular vote (82% of negative votes, participation rate 42%).

190. In a decision of 19 March 1997 the Federal Supreme Court ruled on a proposal to introduce quotas for posts in the cantonal authorities of the canton of Solothurn. The Federal judges declared invalid the popular initiative of Solothurn to that effect (so-called "Initiative 2000"), taking the view that the initiative went beyond what was appropriate in order to ensure material equality of opportunities by imposing parity of gender representation without any limitation in time, which amounted to imposing equality of result. The initiative thus constituted a disproportionate infringement of the principle of equal treatment and contravened the right to elect and to be elected, which was the same for all and was guaranteed by the Constitution. Some legal experts criticized the ruling, not so much for its conclusions as for the underlying arguments; the Federal judges' decision was thought to give unjustifiably greater prominence to formal equality of political rights than to the obligation to ensure material equality of treatment of the sexes,

[88] For more information about the debate on quotas in Switzerland, see Kathrin Arioli (ed.), Frauenfoerderung durch Quoten, Basel /Frankfurt-on-Main 1997; Marianne Schwander Claus, Verfassungsmaessigkeit von Frauenquoten, Berne 1995.

likewise anchored in the Constitution and a matter of special importance in the field of political representation.[89]

191. In a ruling of 7 October 1998 the Federal Supreme Court dealt with the popular initiative of the canton of Uri "for equal electoral chances", which proposed the introduction of male and female quotas in all the canton's authorities and of balanced lists of candidates for elections by proportional representation. The Federal Supreme Court used the proposal to explain its own jurisprudence. Basing itself on Switzerland's dominant doctrine, it considered that quotas were a means of attempting to influence results and, as such, were not generally inconsistent with the Federal Constitution. It emphasized, however, that international law and, in particular, the Convention on the Elimination of All Forms of Discrimination against Women did not oblige signatory States to introduce political quotas but, on the contrary, left them free to choose appropriate means of eliminating the under-representation of women in political and public life. The Federal Supreme Court partly invalidated the cantonal decision to declare the initiative unconstitutional, but confirmed that to impose "result quotas" on authorities elected by the people was unlawful. However, it did consider lawful the introduction of quotas for lists of candidates.[90]

192. Proposals and initiatives at the cantonal or communal level aimed at introducing compulsory quotas in public or administrative bodies have not proved much more successful. Almost all have been rejected by the electorate, the parliament or the government. Thus, the electorate of the canton of Uri rejected the "equal chances" initiative in the wording declared lawful by the Federal Supreme Court (cf. para. 191 above). A proposal to introduce quotas in the Parliament of Berne City suffered the same fate in 1995; the draft did not provide for a fixed female quota but proposed that each sex should be entitled to hold at least 40% of all seats (i.e. 32 seats) throughout the legislature.

193. Even if the introduction of gender quotas, fixed or otherwise, has met with scepticism and rejection on the part of the majority of voters of both sexes in the cantons, the many proposals and initiatives submitted seem to have alerted the public to the problem of women's under-representation and to have contributed, at least partially, towards arousing greater interest in parity representation in public administrations and elected bodies.

C. Participation of women and men in non-governmental organizations concerned with public life (art. 7 (c) of the Convention)

Women's integration in non-governmental organizations involved in public life

194. The freedom of association guaranteed under article 23 Cst has engendered a large number of non-profit-making associations that participate, in one form or another, in public life. The Swiss Civil Code (art. 60 ff) spells out in detail the rules governing the establishment, organization and dissolution of such bodies. In Swiss

[89] ATF 123 I 152. The following authors have commented on this ruling: Astrid Epiney, Chancengleichheit ueber das Ergebnis?, PJA/AJP 1997, pp. 1033 ff; Denise Buser /Thomas Poledna, Politische Quoten auf dem Schafott – Reflexionen zum Bundesgerichtsurteil zur "Solothurner Quoteninitiative", PJA/AJP 1997, pp. 981 ff; Andreas Auer / Vincent Martenet, Les quotas, la démocratie et le fédéralisme, RSJ 1997, pp. 629 ff.

[90] ATF 125 121.

law, associations are free to decide whom they want to be their members. No one, man or woman, can demand to be admitted to the membership of a non-profit-making association against that organization's will. But, according to doctrine, refusal to admit a person to membership must not be based on a statutory provision or practice that is discriminatory against women; such a situation would contravene morality, which would be sufficient grounds for bringing a suit for violation of rights of the person within the meaning of article 28 CCS. Thus, the statutory provisions or practices of an association that systematically excluded women would be punishable under Swiss law. But the Federal Supreme Court has never yet been called upon to rule in this matter. It has, however, established that corporations in private law exercising powers of public authority must respect the principle of gender equality of treatment.[91]

195. Women have played a decisive role in the development of the *consumer protection movement* in Switzerland. Most existing consumer protection organizations came into being in the 1960s in the wake of the activities of traditional middle-class women's associations. Their object was to protect the interests of female consumers (later joined by men) in face of the producers and distributors of consumer goods. They launched debates on new problems of the consumer society, advocated price liberalization and insisted on product labelling and price indicators. Their periodicals published the results of comparative tests with the aim of informing consumers of both sexes. The new generation of women participating in consumer defence organizations are increasingly concerned with environmental protection issues and the consumer society's third-world aspects.

196. Women's groups in the *trades unions* have no roots in the traditional feminist movement. The women's trades union VCTA (the initials stand for "sale, commerce, transport, food") was the first to set up an autonomous women's committee in 1946, but strong pressure from the new feminist movement was needed before other trades unions followed suit. The incorporation of women and their claims in the trades unions' general policies did not take place without resistance. However, the situation has changed in step with changes in the membership of the trades unions' governing bodies, previously dominated by men. Since 1990, the Swiss Union of Trades Unions, an umbrella association that includes several trades unions, guarantees that 40% of its executive secretaries shall be women. Little by little, the trades unions belonging to the Union are following suit.

197. The proportion of women among members of the Swiss Union of Trades Unions has risen steadily to reach 19.8% in 1999. The Swiss Public Services Trades Union (SSP) has 30% of women members.

198. Since the year 2000, the Swiss Council for Youth Activities (CGAJ) has collaborated with the Federal Commission for Women's Issues in operating a *mentoring project* entitled "From Woman to Woman". The idea is to find women in the world of politics and in women's associations who will undertake to act for a year as mentors to younger women interested in social issues and will support them on the occasion of their first public appearances.

[91] ATF 117 Ia 107.

Political parties and the advancement of women

199. Women are still a minority in political parties, not only as holders of elected posts but also as rank-and-file members. Many women engage in voluntary community work but most of them do so outside the political parties.

200. Political parties are increasingly adopting measures for the advancement of women. At present, such measures vary from party to party and sometimes also from canton to canton. As Swiss political parties generally have a federalist structure, their cantonal sections enjoy considerable autonomy. Some parties have analysed the position of women in their midst, issued guidelines for women candidates for election, introduced special training courses for women candidates (public speaking, relations with the media), set up women's electoral committees, tried to throw open their candidates' lists to women and created special internal structures for women. The Socialist Party, the Christian Democratic Party and the Radical Party each have a bureau dealing with women's issues.

201. Quotas are among the most promising as well as the most controversial means of advancement of women. The Swiss Ecological Party, which is currently represented by more women than men on the National Council, introduced a 50% quota applicable to all its organs and candidates' lists as far back as 1987. In 1986, the Socialist Party introduced a quota of one-third for each sex in all its organs and on all its lists of candidates, including those for cantonal and communal elections. Since then, the quota has been raised to 40%. The Christian Democrats were the first right-wing party to introduce a one-third quota (known as the "proportional rule") for all its organs at Federal level. This formula has been only partially adopted by the cantonal parties, which apply it to lists of candidates for election.

202. Another method of increasing the proportion of women is to draw up separate lists of men and women candidates. Experience of this system in several cantons that adopted it has shown that its effectiveness in improving the chances of election of women candidates depends on local conditions. Separate lists are by no means a certain way to ensure the success of women candidates; the outcome depends on the local electoral system and the initial standing of the male and female candidates.

Women's organizations in Switzerland

203. Switzerland's many women's organizations, whether denominational or general, provided women with a platform for organizing themselves and exercising an influence on public life before they had obtained the right to vote and to be eligible for election. These voluntary socially oriented organizations offered women possibilities of further education and formed a framework within which they could use political techniques and create an electoral base for themselves among other women. Some organizations, in particular the Swiss Association for Women's Suffrage (today Swiss Association for Women's Rights, or "adf") fought indefatigably for decades to obtain electoral rights for women and to ensure women's participation in Swiss political life.

204. Continuing education is one of the main traditional pursuits of many women's organizations, and in particular of the two denominational umbrella associations (Swiss Catholic Women's League and Swiss Protestant Women's Federation), the Alliance of Swiss Women's Societies (today "Alliance F") and the Swiss

Association for Women's Rights (adf). From their inception these organizations have offered lectures, congresses and courses to their members and have published brochures on topical subjects as well as periodicals. In addition, they regularly publish their views on questions being submitted to popular votes and on draft legislation.

205. Since the 1970s, many new movements and organizations have sprung up, attracting large numbers of women. Women have, from the outset, played a leading role in mixed-sex environmental protection groups; they have joined organizations concerned with Switzerland's relations with developing countries, with energy problems and with the issue of peace. The new feminist movement introduced a new style, alerted public opinion to new subjects such as violence against women in the family and at work, sexuality, interruption of pregnancy, etc., and began to challenge role stereotypes. Being autonomous itself, it challenged the hierarchical structure of society and took militant action in many different fields. For example, it set up associations for the protection of battered women and opened shelters for such women and their children. These multiple projects eventually came to form a whole network of feminist structures, including advisory services, women's health centres, self-defence groups, workshops, bookshops, periodicals, discotheques, women's music groups, women's film festivals, women's cultural conferences and so forth. Local women's groups, ranging from traditional charitable organizations to new feminist initiatives, are organizing round tables, reading circles, guided tours for women, cultural conferences and mutual aid services. They also take action on behalf of women in the communes.

206. The birth of the more outspoken new feminist movement has influenced the style of the traditional women's organizations, trade unions and political parties, as well as the contents of their agendas. In the 1970s the traditional and new women's organizations jointly launched the popular initiative on "Gender Equality", which led to the adoption, in 1981, of a new article 4, paragraph 2 oCst proclaiming the constitutional principle of gender equality. They were also at the origin of the setting up of the Federal Commission on Women's Issues, which advises the Federal Council on matters relating to women and raises the public's awareness of these problems.

207. Today there exists a multitude of women's organizations and groups, reflecting the most varied orientations, which participate in public debates on political subjects and militate on behalf of women. It is impossible to name all the organizations that have participated and are participating in the debate on gender equality at the legal, political, social and economic levels. They are listed in a booklet entitled "1000 Addresses for Women in Switzerland" published by the Federal Bureau for Gender Equality with the particular aim of facilitating contacts.[92] On the tenth anniversary of the inclusion of the principle of gender equality in the Constitution (14 June 1991), the Swiss Union of Trades Unions called a national women's strike. Women's organizations took advantage of this opportunity to draw the public's attention to shortcomings in the principle's implementation. About half a million women took part in numerous events organized all over Switzerland. When, in 1992, the Federal Parliament elected a man to replace a Federal Council member who had resigned, thus causing the Federal Council to remain an all-male body, demonstrations and protests were held across the country. The male Federal

[92] Federal Bureau for Gender Equality, *1000 Addresses for Women in Switzerland*, Berne 1998.

Councillor-elect, a socialist, turned down the post and a woman was eventually elected in his place.

208. Like all organizations that play an important role in public life, women's organizations are regularly consulted by the Confederation and the cantons in connection with the drafting of important new laws (consultation procedure). The Confederation wants to develop the dialogue with women's organizations in order to ensure fuller integration in politics of women's special interests and viewpoints.

D. Advancement of women's participation in the political and public life of other States

209. Advancement of human rights, democracy and the rule of law is one of the priorities of Switzerland's foreign policy, as the Federal Council explains in its 1993 and 2000 reports on Switzerland's foreign policy and its report on Switzerland's *North-South relations* in the 1990s. Swiss development cooperation supports organizations and Governments trying to improve women's representation in decision-making organs. Such support takes the form of training and information activities and legal advice. Thus, the Directorate of Development and Cooperation (DDC) of the Federal Department of Foreign Affairs devotes special attention to women's interests in development programmes aimed at promoting autonomy, human rights, good governance and democratic culture. DDC supports non-governmental organizations that provide legal and organizational aid to women trying to achieve greater control of their lives.

210. Women's integration in political decision-making is especially important in situations of crisis and armed conflict, which render them particularly vulnerable. The Federal Council therefore intends to give greater support to efforts (e.g. those of OSCE) to encourage women in conflict areas to embrace the cause of peace and security and to provide them with the means of doing so. In countries where the Confederation is supporting the efforts of Governments or organizations to prevent or resolve conflicts, women's participation will be encouraged and the parties to the conflict will be made aware of women's special interests and needs.

Article 8 of the Convention – Equality of conditions of representation and participation at the international level

A. Women in the diplomatic service

211. The Federal Department of Foreign Affairs (DFAE) offers three categories of posts to its transferable staff: the diplomatic service, the consular service, and secretarial and special posts. Entry into the diplomatic and consular services is by competition. The applicable provisions do not set any conditions based on gender. These services are equally accessible to women and to men.

212. Today, the proportion of women in the *diplomatic service* is still low (16%, or 61 women as against 215 men, including trainees). One of the reasons for this is probably the fact that not many men are willing to follow their wife or partner abroad. Moreover, the Civil Service Statute has only recently begun to allow persons posted abroad to work part-time. At present there are 8 women and 101 men of ambassadorial rank (i.e. 7% women).

213. On the other hand, the proportion of women taking the annual entrance examination and the number of women actually admitted for training are steadily rising. In 2000, women accounted for 42% of examination candidates. Since 1994, women have regularly accounted for over a third of those attending the training courses that begin each year. The Federal Department of Foreign Affairs has recently launched an information campaign and a *women's advancement programme* in the hope of persuading more women to apply for training for the diplomatic service.

214. In the *consular service*, the proportion of women has grown considerably over the last few years; today, women account for 33% of all staff (188 women as against 372 men, including trainees). The number of women applicants having greatly increased, proportionally more women than men have applied for consular training since 1990. However, there is today only one female consul-general (as against 33 men) and one female member of the consular staff performing the duties of a chargé d'affaires.

215. Conversely, there are 253 women as against only 16 men in the secretarial services of Swiss embassies and consulates.

216. The services are being restructured. Many staff members are being transferred from secretarial duties to the consular service, as a result of which the proportion of women in the latter will increase considerably.

B. Women in delegations to bilateral and multilateral negotiations

217. There are still rather few women in delegations and international organs representing the Confederation. According to instructions issued by the Federal Council in 1991 concerning the representation and professional status of female staff of the Confederation's general administration, the authorities must ensure that women are properly represented in newly established organs. Here again, gender parity is the object.

218. In its directives issued in 1999, the Federal Council further stipulates that Swiss interest groups, such as non-governmental organizations and associations, including women's organizations, must participate in an adequate manner in international conferences as well as in their preparation and follow-up. Where interest groups are likely to make a major contribution to the formulation of Swiss policy and, by so doing, to ensure a firm place in Switzerland's domestic policy for the issue concerned, the Federal Council may even, in certain well-defined cases, invite representatives of such groups, whether women or men, to form part of an official delegation. This practice, already well-established, will doubtless continue to develop.

C. Women and men in international organizations

219. It is entirely in Switzerland's interest to strengthen its presence in international organizations. With this object in mind, the Federal Council reviewed in 1998 the Ordinance on the posting of employees of the Confederation to international organizations.

220. When international organizations have posts to fill, they generally do so on the basis of their own criteria and *ad personam*. Switzerland therefore has only a small

say in deciding whether a man or a woman is selected for a particular post. When Swiss nationals are invited to apply for a post, they naturally receive the Swiss authorities' support, whatever their sex. The Confederation would like to persuade a growing number of women to apply for such posts.

D. Women in peacemaking and peacekeeping operations

221. Maintaining peace and security is one of the five goals set by the Federal Council in its 1993 and 2000 reports on Switzerland's foreign policy. The Federal Council wishes to do more in this area and to enhance its preventive diplomacy, in particular through the participation of Swiss women and men in conflict inspection, investigation and mediation missions and by developing mechanisms for the peaceful settlement of disputes.

222. Joining a peacemaking or peacekeeping mission is voluntary for both women and men. Missions are performed in civilian clothes or in uniform, or else as part of a military operation. Switzerland does not, at present, provide an armed contingent. 150 to 300 Swiss women and men forming part of the Swiss medical unit were involved in the peacekeeping operations of the United Nations Transition Assistance Group (UNTAG, 1989/1990) in Namibia and of the United Nations Mission for the Referendum in Western Sahara (MINURSO, from 1991). Women accounted for about one-third of that total.

223. Since 1997, a woman of the Women's Army Service and another from the Red Cross Service have worked as military observers in Georgia and Bosnia. Their duties today consist in training future military observers of both sexes. The poor representation of women in this field is essentially due to the fact that the officers selected must hold the rank of captain or major, which is currently the case with only around forty women.

224. Peacekeeping operations (Swiss contingent in Kosovo, "Swisscoy") are performed exclusively by volunteers of both sexes. Preliminary basic military training is required. Besides army personnel, Swisscoy also includes some women members of the fortifications protection corps, employed in Kosovo as professional staff. The Women's Army Service makes regular efforts, through the publication of information booklets, to encourage women doing their military service to participate in voluntary missions abroad.

225. The Federal Department of Foreign Affairs is doing its best to employ the highest possible proportion of women in the United Nations and OSCE *peace missions* in which it participates, inter alia in the hope of introducing a specifically feminine outlook in peacemaking operations. Where qualifications are equal, women applicants are given priority. But since the number of women applicants is consistently below that of men, parity has not yet been reached. The Department's services responsible for sending experts on humanitarian aid, protection of living conditions and peacekeeping missions abroad devote a great deal of attention to maintaining cooperation between women and men during such missions by alerting the persons concerned to the risk of tensions arising from gender-determined differences in behaviour. The basic course for Swiss experts of both sexes specialized in civilian peace operations includes a module on gender-differentiated social relations, and a similar approach is also reflected in other modules. Efforts are

also made to incorporate gender-oriented training elements in courses designed for staff recruited for public missions to conflict or crisis areas.

226. The conditions for appointment to *election-observing missions* are the same for men and women. The pool of election observers currently includes 36 women and 114 men. A possible reason for the far smaller number of women than men applying for such duties may be the lack of a support structure to take care of children during their mother's absence abroad.

227. Since 1996, Switzerland has been especially vocal in advocating that OSCE should pay particular attention to women's interests in its conflict resolution activities. It has currently placed at the disposal of OSCE a woman expert responsible for enhancing awareness of social gender differences both at the organization's headquarters and in the field, monitoring opportunities for recruitment and promotion available to women, and providing training on gender issues to new mission members. Since early in 2000, at Switzerland's request, this post has been funded out of the OSCE budget.

Article 9 of the Convention – Equal rights with respect to nationality

228. Under the Nationality Act,[93] Swiss nationality is acquired directly by virtue of the Act (through filiation, art.1, and through adoption, art.7) or by a decision of the authorities (naturalization, recovery of nationality or facilitated naturalization, arts. 12 ff.).

229. Before the review of the Nationality Act in 1992, a Swiss national's foreign wife automatically acquired Swiss nationality through marriage, which was not the case with foreign men married to Swiss women. A Swiss woman marrying a foreign man lost her Swiss nationality unless she declared that she wished to keep it. These inequalities of treatment have been abolished. Foreign women and foreign men marrying a Swiss national are now treated in the same way, both receiving a residence permit. Foreign spouses of Swiss nationals of either sex benefit from facilitated naturalization if they have lived in conjugal union with their Swiss spouse for three years and have resided in Switzerland for a total of five years (art. 27 LN).

230. Children of Swiss mothers acquire Swiss nationality in all cases. The Nationality Act provides that children of a married couple where one of the spouses is Swiss, as well as children of an unmarried Swiss mother, shall receive Swiss nationality at birth. On the other hand, a child of unmarried parents will acquire Swiss nationality through his/her Swiss father only if the father eventually marries the child's foreign mother (art. 1, para. 1 LN). The child of a Swiss father not married to the mother may, however, apply for facilitated naturalization subject to certain conditions (art. 31 LN, see para. 227).

231. The Nationality Act also contains transitional provisions intended to make the transition from the old to the new Act relatively equitable and reasonable. Articles 58 ff relate to the recovery of Swiss nationality by women who have lost it through marriage under the old Act. Recovery of Swiss nationality is possible subject to certain conditions. It should be noted, however, that the possibility

[93] Federal Act of 29 September 1952 on the acquisition and loss of Swiss nationality (Nationality Act, LN), RS 141.0.

already existed under the old Act. Other transitional provisions are designed to offset the effect of the new rule whereby foreign wives no longer acquire Swiss nationality automatically on marriage but only through the facilitated naturalization procedure. Today, the child of a foreign man and a Swiss woman who has acquired Swiss nationality through a previous marriage to a Swiss man will acquire Swiss nationality only if he or she cannot acquire any other nationality at birth or becomes stateless before coming of age (art. 58a LN). The purpose of this provision is to place children born under the old and the new Act, respectively, on an equal footing.

232. The provisions relating to *ordinary acquisition of nationality* treat both sexes equally. Swiss law does not, in principle, provide for the possibility of judicial implementation of a claim to ordinary acquisition of nationality; however, some cantons (e.g. Solothurn and Basel City) do allow such a possibility, subject to certain restrictive conditions. Swiss nationality is acquired through naturalization in a canton and a commune. The Confederation grants the corresponding naturalization permit (art. 12 LN). The Federal authorities check whether the applicant (of either sex) is suitable for naturalization, and in particular whether he or she is well integrated in the community, is familiar with Swiss customs and the Swiss way of life, behaves in conformity with the Swiss legal order and does not endanger Switzerland's domestic or external security (art. 14 LN). Foreigners (of either sex) cannot, in principle, apply for naturalization unless they have resided in Switzerland for 12 years in all, including three out of the five years preceding the application. Where two spouses submit applications simultaneously and one of them meets the above-mentioned conditions, it is sufficient for the other to have resided in Switzerland for five years in all if he/she has been living in conjugal union with his/her spouse for the past three years (art. 15 LN).

233. *Facilitated naturalization* is available to foreign spouses of Swiss women or men who have resided in Switzerland for five years in all, who have been resident there for one year and who have lived in conjugal union with their spouse for three years (art. 27 LN). The same applies to foreign children of a Swiss father who have not yet reached the age of 22 years (art. 31 LN). In all cases, *facilitated naturalization* is likewise granted provided that the applicant (man or woman) is integrated in the community, complies with Swiss law and does not endanger Switzerland's domestic or external security (art. 26 LN).

234. Provisions governing *loss of nationality* are not discriminatory in any way. Nationality is lost as it is acquired, i.e. directly where the conditions established by the Act are met (annulment of the filiation link between the child and the parent through whom Swiss nationality was transmitted; adoption by a foreigner (man or woman); under certain circumstances, birth in a foreign country (art. 8 ff LN)) or by a decision of the authorities (release from nationality by request, arts. 42 ff; withdrawal of nationality, applicable only to dual nationality holders, arts. 48 ff).

235. To be exhaustive, we should point out that, while inequalities of treatment in the acquisition of Swiss nationality have been eliminated, the acquisition of cantonal and communal citizenship rights continues to be subject to discriminatory provisions. Thus, children of married Swiss parents acquire only the father's cantonal and communal domicile rights. The same applies to a minor child whose parents marry after his/her birth (see paras. 23 and 61 above and paras. 539 and 609 below).

Article 10 of the Convention – Elimination of discrimination in the field of education

236. With regard to the right to education in Switzerland, see the initial report of Switzerland under the International Covenant on Economic, Social and Cultural Rights (1996), paras. 616 ff.

A. Overview of the Swiss educational system

237. The Federal Constitution does not proclaim an explicit right to education. However, in article 19 Cst (connected with art.62, para.2 Cst), it guarantees the *right to sufficient and free primary education*, the organization of which is the responsibility of the cantons. Following the rejection in 1973 of a popular initiative aimed at including in the Constitution the right of everyone to receive an education corresponding to his/her abilities, the Federal Supreme Court does not recognize the existence of an unwritten basic general right to education.[94]

238. When the International Covenant on Economic, Social and Cultural Rights came into force in 1992, its article 13 guaranteeing a right to education became a law in force for Switzerland. But in the view of the Federal Supreme Court this provision does not possess the requisite qualities – in particular, that of precision – to serve as the basis for an individual right that could be invoked in judicial proceedings. The Federal Supreme Court considers that the right to education is programmatic by nature and therefore is not directly applicable but, rather, is addressed principally to the lawmaker.[95] In the same spirit, the Federal Constitution in force lists a series of "social goals", some of which relate to the field of education. Thus, the Confederation and the cantons shall strive to ensure, in particular, that children and young people and people of working age shall benefit from initial and continuing education according to their abilities (art. 41, para. 1(f) Cst). The concept of education in the Constitution must be understood in its broad sense and includes, in particular, professional (or vocational) education, general culture, development of the personality, artistic and musical education and sports education. We recall that article 8, para. 3 Cst guarantees gender equality and provides that legislation shall ensure equality in law and in fact, particularly in the field of education. Civil law guarantees to all children of a family, irrespective of gender, the same rights to receive the best possible instruction and education depending on the personal abilities of each child.

239. The Swiss educational system is a mosaic composed of 26 largely autonomous cantonal systems. Since the Federal Constitution attributes only limited jurisdiction to the Confederation in this field, the cantons enjoy far-reaching autonomy. The cantons, joined together in a Coordination Concordat since 1970, regulate the organization of their schools systems under cantonal laws that differ greatly from one canton and language area to another. Cantonal systems must, however, respect the principles and limits laid down in the Federal Constitution.

240. In the field of education, the Confederation's jurisdiction extends to the following:

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[94] See in this connection ATF 117 Ia 30 ff; 121 I 124 ff; 126 I 240. The 1973 popular vote produced a majority of votes cast (52.8%) but not a majority of cantons.

[95] ATF 120 Ia 1, in particular preambular clause 13.

- It watches over sufficient and free compulsory primary education, the organization of which is a cantonal matter (art. 19, connected with art. 62 Cst);
- It legislates on professional and vocational education, operates Federal technical universities and supports other universities (art. 63 Cst);
- It regulates admission to examinations in medicine and pharmacology and to Federal technical universities and recognizes, by ordinance, the certificate of completion of secondary education (*certificat de maturité*);
- It encourages scientific research and may create and operate research institutions (art. 64 Cst);
- It grants subsidies to the cantons for the allocation of scholarships or other assistance to education (art. 66 Cst);
- It complements cantonal measures in support of extra-curricular activities for children and young people and of adult education (art. 67, para. 2 Cst);
- It promotes sports, particularly sports education, and may legislate on the practice of sports by young people (art. 68 Cst);
- It may support cultural activities of national interest and encourage art and music, in particular in the field of education (art. 69, para. 2 Cst);
- Lastly, the Confederation and the cantons shall encourage understanding and exchanges between the language communities (art. 70, para. 3 Cst).

241. Switzerland does not have a Federal Ministry of Education. The Federal Office for Education and Science of the Federal Department of the Interior, in cooperation with the services responsible for economic policy, other Federal services concerned and the competent cantonal services, takes care of the encouragement of cantonal universities, academic institutions and projects, research and the encouragement of research institutions, allocation of study grants, holding Federal *maturité* examinations, and defending Swiss interests at the international level. The Federal Office for Professional (Vocational) Education and Technology of the Federal Economic Department, for its part, deals with professional/vocational education and with specialized higher educational establishments. The same distribution of tasks is, in some cases, reproduced at cantonal level.

242. Several bodies are responsible for coordinating the work of different institutions and cantons. The Swiss Conference of Cantonal Public Education Directors ensures coordination among the cantons, the importance of which is constantly growing in step with the increasing mobility of the population. Other bodies, such as the Swiss Science and Technology Council and the Conference of Swiss Universities, take care of specific aspects of coordination. An inter-cantonal concordat concluded in 1970, joined by 25 of the 26 cantons, has harmonized large parts of the cantonal educational systems: compulsory schooling begins at age 6 and goes on for 9 years; schooling continues for 12 to 13 years until the *maturité*; the school year starts at the end of the summer.

243. *Pre-school (kindergarten) education* falls within the purview of cantons and communes. Kindergarten is generally optional and free. In most cantons its purpose is principally that of upbringing, and it is meant for children of 5 to 6 years of age. In some cantons it also takes care of younger children (from age 3). Although kindergarten is not compulsory, only 2% of children enter school today having not

had any form of pre-school education. On average, children spend 1.8 years in the pre-school education system.

244. *Compulsory education* (primary school and junior secondary school) is a matter for the cantons, which share the task of organizing and funding it with the communes. Compulsory schooling is free and generally goes on for 9 years. At present, the rate of attendance in compulsory education establishments is close to 100%. Primary education is organized in a fairly uniform manner in all cantons. Each class generally has one or two masters or mistresses. Classes are normally composed of children of the same age, but some mixed-age classes exist in sparsely populated areas. The main subjects taught are reading, writing, arithmetic, elementary geography, music, gymnastics and sports. A second national language is taught generally from the 4th or 5th year and sometimes earlier. Junior secondary schooling differs more markedly from one canton to another. It is supposed to provide a basic general education and to prepare students for apprenticeship or further study. It also serves the purpose of selection and orientation. In nearly all cantons, junior secondary education is provided in three to four categories of schools. The elementary-level categories, which prepare students for the less demanding apprenticeships, absorb about a third of each age group, the higher-level schools taking up the remaining two-thirds. Some cantons have a single category of junior secondary schools offering several levels ("streams"), while others have adopted a system of "bridges" interconnecting the categories.

245. Upon completing compulsory education, 90% of students in any one age group proceed to some form of further education or training. *Senior secondary education* comprises two categories of educational establishments, general and professional/vocational. One of the special features of the Swiss educational system is the great importance attached to professional/vocational training. Seven young people out of 10 opt for professional/vocational training (in-house apprenticeship with part-time attendance at a vocational school, full-time vocational school, elementary training) on completing their compulsory schooling. Only a minority chooses the general education track (senior grammar school, teacher training college or equivalent, diploma school), which leads to the *maturité* and thus gives access to the university. However, the proportion of students opting for the general education track has been rising since the 1980s.

246. *Higher (university) education* is provided at universities, Federal technical schools, specialized higher educational establishments and higher technical educational establishments. The Confederation has two university-level Federal technical schools at Lausanne and Zurich. In addition, Switzerland has 10 cantonal universities (Basel, Berne, Geneva, Fribourg, Lausanne, Lucerne, Neuchatel, Zurich, St.Gall and Ticino), which enjoy very far-reaching autonomy. Some 11% of Swiss 25-year-olds receive a university education. In order to enter the university it is, in principle, necessary to possess an appropriate diploma (generally the *maturité*). In 1995 the Confederation introduced a system of specialized higher schools, which are gradually replacing the specialized higher educational establishments that used to offer a professional/vocational education leading to a specialized qualification. The specialized higher schools offer high-quality vocational training of a more practical kind. They are meant principally for students of either sex who have completed a form of basic vocational training and obtained a diploma, preferably a so-called "professional" *maturité*.

247. Adult education, which is recognized as forming an integral part of the Swiss educational system, receives support from the Confederation, the cantons and the communes. It is, however, provided largely by the private sector. Adult education can take a variety of forms: re-training, professional or vocational advanced training, personal development, parenthood classes. The latter are particularly important from the point of view of the avoidance of stereotyping in family and public life.

B. Constitutional mandate to ensure gender equality in the field of education

248. As already stated, article 8, paragraph 3 Cst calls upon the lawmaker to ensure equality gender equality, in particular in the field of education. This constitutional mandate also applies to the cantons and communes, which perform important tasks at various levels of the public education system. It goes without saying that those tasks, too, are subject to the prohibition of discrimination set forth in article 8, paragraph 2 Cst.

C. Access to the same curricula and the same educational establishments at all levels (art. 10 (a) and (b) of the Convention)

The situation de facto and <u>de jure</u>

249. There are no formal rules at Federal or cantonal level designed to impede or prohibit girls and women from having access to the education system. But, despite the considerable advances achieved in the past few decades, de facto equality of the sexes in terms of access to educational establishments has still not been attained.

250. At the *compulsory education level*, nearly all girls and boys attend school until the age of 15. The equal rights principle has led to the progressive harmonization of curricula for both sexes. As far back as 1972, the Swiss Conference of Public Education Directors invited the cantons to introduce the same number of hours of manual subjects (handicrafts) for boys and girls and, in higher education, to allow girls to take courses in technical subjects. In 1986 the Federal Supreme Court confirmed the unconstitutionality of a curriculum in which handicrafts and domestic science were compulsory only for girls.

251. Overall, girls do better than boys in the selection process. There are far fewer girls in special (remedial) classes (37.9%) and fewer girls have to repeat a school year (boys account for 57%). At entry into junior secondary school, which is selective in nearly all cantons, there are slightly more girls in the higher-level schools, while boys form the majority in the elementary categories.

252. The 20th century development of the Swiss education system has had a very positive impact on the educational level of the population in general. Post-compulsory education has developed among both women and men. In 1999, while 40% of people aged 65-74 had not had any post-compulsory education, the same was true of only 12% of 25-34 year olds. In the case of women, the difference between the two age groups amounted to 36% (52% as against 16%); in the case of men it was between 23% and 9%. Thus the gender difference in that respect had greatly diminished. Nevertheless the fact remains that, in both age groups, the number of women without any post-obligatory training was almost twice that of men.

253. In 1999, 93% of girls and 96% of boys reaching the end of their compulsory education chose to continue in some form of training. Thus the gap between girls and boys in senior secondary education (the girls' rate of admission in 1980 was 82%, as against 96% for boys) was very nearly closed. However, the gender difference is more marked if we compare the percentage of girls going on to courses of study leading directly to the university (senior grammar schools, teacher training colleges, long-term apprenticeships) with that of boys (girls 74%, boys 85%).

254. Today, 63% of girls and 77% of boys in every age group opt for professional or vocational training. For the past 30 years no difference has existed in principle between so-called "women's" and "men's" professions. Vocational guidance services, which used once to be separate for the two sexes, now largely address themselves to both. However, stereotypes continue to influence the choice of profession and the number of apprenticeships on offer, with the result that girls remain confined to a fairly limited range of occupations. Girls often choose shorter vocational training courses (1 to 3 years), chiefly in commerce and administration or in the paramedical field. Highly technical and innovative professions, such as data processing, are still dominated by males. Overall, gender segregation in vocational training has remained practically unchanged since 1980. Many areas continue to be reserved for men (e.g. the metallurgical and mechanical industries, building trades, etc.), while areas such as personal and paramedical care attract practically only women.

255. In 1998, more women than men obtained diplomas from general educational establishments and teacher-training colleges (23% as against 18%). Since 1993, the percentage of girls obtaining the *maturité* has been higher than that of boys (19.2% as against 16.4% in 1999); 52.8% of the *maturité* diplomas issued go to girls. While boys are more strongly represented in senior secondary schools specializing in mathematics and natural science, they form the minority in those specializing in languages and music.

256. Gender inequality is most pronounced at *university level*. About twice as many men as women obtain a university degree or diploma of higher professional education. Nevertheless women's access to university studies has progressed considerably. In 1980 the university admission rate (number of persons starting at university as a percentage of the total permanent population aged 21) was 15% for men and only 5% for women; in 1999, figures for the two sexes were practically the same (18.7% women, 19.6% men). In 1998, 7.5% of women students obtained a degree or diploma, the proportion of men having done so (number of BAs or other diplomas awarded to students as a percentage of total permanent population aged 27) being considerably higher (11%). However, the women's percentage showed a certain improvement over the 1990 figure of 4.6%.

257. In 2000, 45% of the country's students were women, but considerable differences exist between cantonal universities. In Geneva, 57.2% of students are women, as against only 25.1 at St. Gall University, which specializes in economics. Women are very much in the minority in the Federal technical schools (17.9% Lausanne, 26.3% Zurich). In 2000, 43% of BAs and other diplomas and 34.4% of PhDs were awarded to women. Only 9% of candidates for doctoral habilitation, the highest qualification of the academic career, in German Switzerland in 1998 were women. The proportion of women among teaching staffs in traditionally feminine

subjects, such as education science or art history, is barely higher than in those where the student body is more mixed.

258. In choosing their field of study, both female and male students tend to reproduce the traditional stereotypes. In 2000, 62.5% of female students chose human or social sciences, followed by medicine and, in third place, law, where the proportion of women students has risen by 72% over the past 20 years. While the proportion of women engineering students remains small (22%), it has nevertheless risen by 6% in the past 10 years.

259. The number of diplomas issued in higher professional (non-university) education has been rising steadily since 1980. Higher technical education, in particular, continues to be strongly dominated by men. In all, only one-third of diplomas go to women. The choice of field of study varies greatly between the sexes. Women account for only 3% of the student body in higher technical schools; the proportion of women in the social studies sector, on the other hand, is 63%. In employment, women outnumber men in business and administration, but in higher educational establishments preparing students for careers in those branches they account for only 24%. In 1999, 22% of 27-year old women obtained a higher professional diploma, as against 39% of men of the same age.

260. The *percentage of women in the teaching profession* is directly proportional to the level at which they teach: the higher the level, the smaller the number of women teachers. Thus, women account for 97% of the teaching profession in preschool education and 59% in compulsory education, but for only 32% in post-compulsory general secondary schools. In vocational schools, the distribution by gender is the same among teachers as among students: 28% of the teaching staff in industrial and business schools are women, as against 73% in schools providing training in the health professions. In the universities, women accounted in 1999 for 20.1% of mid-level academic staff but for only 7.4% of professorial-level staff.

Measures adopted by the Confederation and the cantons

General remarks

261. In its 1993 guidelines on gender equality in the education system, the Swiss Conference of Cantonal Public Education Directors recommended that cantons should guarantee equal access to all schooling and professional/vocational training opportunities to both sexes. The guidelines specify that the goals and contents of education must be the same for both sexes. Formally, therefore, the cantonal education systems are today completely open to both sexes. Many cantons use this formal equality as an excuse for failing to take practical steps to ensure de facto equality. Some, however, have adopted purpose-oriented measures, e.g. by monitoring and adapting the forms and contents of teaching materials (elimination of sexist wording and traditional stereotyping, etc.), developing opportunities for women and girls in the study of natural science and technology, encouraging girls to choose untypical professions, and increasing the proportion of women in the teaching profession.

Vocational training

262. With a view to enlarging the limited supply of apprenticeship places, the Federal Assembly in 1997 voted a special credit of 60 million francs, in particular for campaigns to motivate and inform women and other disadvantaged target groups, such as foreigners of both sexes with language difficulties and young people with poor learning records ("Decision No. 1 on apprenticeship places"). This emergency measure with essentially quantitative objectives was replaced in 1999 by a new decision, more focused on quality ("Decision No.2 on apprenticeship places"), which expressly included promotion of equality among its goals (art.1 (b)) and made it obligatory for the gender equality principle to be taken into consideration in all projects, from the project design to the execution stage (art. 4, para. 3). After the first decision, the Federal Office for Vocational Training and Technology, together with the Swiss Conference of Gender Equality Delegates, had already prepared a guide in which the principle of equal opportunities for women and men was given concrete form.

263. Early in 1998, with the help of funding provided under the Decision on apprenticeship places, the Conference launched a promotion project entitled "16+" by means of which it hoped, in cooperation with everyone involved in vocational guidance and training, to improve the supply of apprenticeship places and to encourage girls to choose their future activities without allowing themselves to be influenced by gender stereotypes. Several part-projects are focused especially on young women who have had little education, migrant women and the improvement of training opportunities. A targeted marketing system has been developed with a view to increasing the number of apprenticeship places. Special efforts are being made to achieve better coordination of vocational training projects based on a policy of gender equality.

264. Some cantons have drawn up directives for training establishments and vocational guidance services and have executed projects for the advancement of women. In particular, with the Confederation's support under the Decision on apprenticeships, they have developed projects for the advancement of women in sectors involving the study of technology or natural science. Such projects incorporate a variety of measures, e.g. advertising apprenticeship places targeting the female population, information and awareness-raising campaigns targeting potential female apprentices and training enterprises with a view to promoting the choice of traditionally non-feminine trades, publications, tutoring, computer courses set aside for girls, etc.

265. Today, the Vocational Training Act[96] enables adults to take *a posteriori vocational training* or to reconvert to a different speciality and obtain a personalized Federal qualification (arts. 18 and 41 LPFr).

Specialized higher and university schools

266. *Specialized higher schools* are a most important novelty in the Swiss education system. But the establishments created to date generally belong to male-dominated sectors of learning, those in areas more popular with women (health, social studies, the arts) being fewer in number. Specialized higher schools are expressly called

[96] Federal Act of 8 October 1999 on vocational training (LPFr), RS 412.10.

upon by law to encourage women; they must take steps to promote gender equality of treatment and to increase the proportion of women among their students.[97] During the authorization procedure that precedes their establishment, the Confederation considers what active measures have been adopted in favour of women. Under the heading of encouragement of education, research and technology in the period 2000-2003, Parliament has granted 19 million francs to specialized higher schools for the specific purpose of promoting equality of opportunities. With a view to concretizing the allocation of these funds, a working group mandated by the Federal Office for Professional Education and Technology has drawn up a plan of action addressed to the specialized higher schools and containing specific proposals in the following areas: establishment of a network of women experts in equality of opportunities, addresses given by women gender equality delegates at specialized higher schools; awareness-raising and motivation; improvement of general study conditions in specialized higher schools (e.g. modular and interdisciplinary approach, provision of nurseries, etc.); promotion and enhanced appreciation of essential skills; research on gender issues; and practical measures reflecting the results of these efforts.

267. Although the organization and funding of higher academic schools are basically a matter for the cantons, the Confederation does encourage the universities. A Federal Act of 1999[98] lists the Confederation's objectives in that area and, in particular, refers to the attainment of gender equality at all levels of academic activity (art. 2(b)). The Federal Council's 1998 "Message on the encouragement of education, research and technology in 2000–2003" defines equality of opportunities for women and men as the central theme running through all measures adopted in the field of education and research.[99] In that connection, the Federal Council considers it particularly important that the universities' staff appointment policies should be aimed at reducing the present under-representation of women among academic staff. The same applies to the respective proportions of women and men in the encouragement of a new generation of academic teachers and the planning of academic careers.

268. Since 1992, the Confederation has conducted a special programme of *encouragement of a new generation of academic teaching staff* at higher academic schools. These special measures envisage a women's quota of one-third for the period 1992-2000. Since the launching of the project this goal has been regularly exceeded, with a nationwide women's proportion of 40%. Some 20% of the persons concerned (men and women in equal numbers) have since obtained professorial appointments. The quota was raised to 40% for the period 2000-2003. The programme further provides for flexible age limits, in particular for the benefit of persons who have deferred their professional careers because of family responsibilities.

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[97] Federal Act of 6 October 1995 on specialized higher schools (LHES), RS 414.71; Ordinance of 11 September 1996 relating to the creation and management of specialized higher schools (Specialized Higher Schools Ordinance, OHES), RS 414.711, art. 11, chapter 11 of the annex.

[98] Federal Act of 8 October 1999 on assistance to universities and cooperation with regard to higher schools (Aid to Universities Act, LAU), RS 414.20.

[99] FF 1999 I 297.

269. The above-mentioned Message of the Federal Council allocates 16 million Swiss francs to the *promotion of equal opportunities* in the years 2000 to 2003. The Federal Council would like the number of women professors to double by 2006 (from 7% to 14%). A further 6 million francs are allocated to a new system of positive incentives in the form of annual prizes for higher academic schools that appoint the largest proportion of ordinary or extraordinary *women professors*. Five million francs will be spent on introducing a *mentoring system* in support of women first-degree or PhD candidates. A project entitled "Womentoring", funded by the Equal Opportunities Encouragement Programme, is offered to women students taking a foundation course or a mainline academic course at Berne University. Lastly, 5 million francs are set aside for the opening and running of *child-care facilities* at universities with a view to providing women students and teachers with the possibility of combining their professional and family obligations. The programme is operated by the Conference of Swiss Universities, which has entrusted its implementation to a pilot committee.

270. The programme of *encouragement of applications for professorial posts*, also operated by the National Fund for Scientific Research, is concerned with the promotion of women in middle-ranking academic posts. Some 61 million Swiss francs are allocated to funding opportunities for high-level research and teaching. Gender equality in each research discipline is considered guaranteed by a women's quota of 30%. The Fund also carries out other ad hoc measures for the advancement of women.

271. The *Swiss Science and Technology Council* has recommended that Swiss higher academic schools should be more attentive to women in their efforts to encourage a new generation of academic teachers and should set approximate targets of the numbers of women teachers to be recruited. The results in terms of promotion of equal opportunities have varied from one establishment to another. The universities of Basel, Zurich, Berne, Geneva, Lucerne, Neuchâtel, Fribourg and St. Gall, as well as the Federal Technical Schools at Lausanne and Zurich, have set up equal opportunities services, whose work generally consists in devising means of achieving equality of opportunities and in promoting a balanced representation of both sexes in all posts and organs. These services also deal with all sorts of queries and requests from students and teaching staff of both sexes.

272. Non-governmental organizations such as "*Femmes, Féminisme, Recherche*" (Women, Feminism, Research) have played an important role in the advancement of women in research and teaching. They are continuing to work energetically for the institutionalization of gender research and for equal opportunities for women and men in those two areas.

D. Elimination of stereotyped concepts of the roles of men and women at all levels (art. 10 (c) of the Convention)

273. The foregoing facts and figures, as well as recent gender studies, indicate that formal equality of access to education and to training programmes is a necessary but not a sufficient stage in the elimination of discrimination against women in that field.

274. The 1993 guidelines on gender equality in education issued by the Conference of Cantonal Directors of Public Education recommend that the cantons should

ensure that the equal dignity of the sexes be respected in forms of communication and in the use of language, and that gender equality be made a compulsory module in the basic training and re-training of teachers of both sexes. In the absence of any survey on the subject, it is difficult to tell how far the cantons have complied with this recommendation.

275. Although *the coeducational system* is today firmly anchored in practice at all levels of Swiss education, it has not always yielded the hoped-for results. A study on the subject of gender relations at school, conducted under national research programme No. 35 "Women, the law and society",[100] shows that systematic coeducation can be disadvantageous to girls and helps to perpetuate the traditional distribution of roles. Girl and boy students differ in their perceptions of the realities of school life. Other empirical studies have shown that girls receive less attention than boys from teachers. Moreover, teachers of both sexes tend to treat girls differently from boys when difficulties arise and to mete out congratulations and reprimands in different ways and for different reasons. Children in coeducational classes generally form part of same-sex groups until early adolescence. Interaction within the classroom is generally dominated by boys, who dictate the rules and make sure, often aggressively, that those rules are respected. Girls must either try to join the dominant group and adopt a competitive attitude, at the risk of being thought "unfeminine" by their schoolmates and even by teachers, or resign themselves to accepting male domination. The Swiss Conference of Cantonal Directors of Public Education therefore recommends, without going back on the coeducational principle, that separate classes be provided where the interests of equality so require.

276. Efforts are also being made to avoid *conveying a stereotyped picture of women and men* and to take account of the right to equality in the preparation of new teaching materials. In its 1993 guidelines on equality, the Swiss Conference of Cantonal Directors of Public Education recommended that teaching methods and materials should reflect the lifestyles and work styles of both sexes. There has been some improvement in textbooks for primary schools, where women teachers are in the majority. But as they grow older, children and adolescents are still regularly confronted with teaching materials that reflect a world dominated by men. Today's school syllabuses, textbooks and exercises often convey an image of a world closer to that of boys than to that of girls, with male rather than female models. Women frequently appear in traditional subordinate or service roles and only very rarely as decision-makers.[101]

277. Gender research undertaken in a wide range of disciplines over the past twenty years regularly reveals *deficiencies in the contents of research* and in the transmission of knowledge. Women, their work and their lifestyles, as well as the resultant mentalities and forms of behaviour, are practically never regarded as suitable subjects for research. Compared with other European and North American countries, where gender research has been institutionalized for a long time, Swiss universities and research establishments have a lot of lost ground to make up. As

[100] Elisabeth Gruenewald-Huber, Koedukation und Gleichstellung: Eine Untersuchung zum Verhaeltnis der Geschlechter in der Schule, Chur/Zurich 1997.

[101] In connection with the problem of gender inequality in education, see the European Court of Human Rights ruling of 15 February 2001 in the case of Lucia Dahlab v. Switzerland, appeal No. 42393/98, p.15 f.

pointed out by the Swiss Conference of Cantonal Directors of Public Education in 1992, gender research in Switzerland receives only a paltry share of the funds allocated to research in traditional fields. Studies on gender issues therefore remain limited and rare.

278. The launching in 1995 of National Research Programme No. 35 "Women, society and the law – paths to equality" marked an important stage in the development of research on women and on gender relations in Switzerland. The funds allocated to this programme are, however, relatively modest. The Conference of Swiss Universities has made research on gender relations one of its priorities. The Swiss Science and Technology Council, after surveying studies on gender relations in education and research carried out in the years 1995 to 1997, invited a group of international women experts to analyse current research and teaching on that subject in Switzerland. The group found that work done in Switzerland in recent years is of high quality. But the potential is under-exploited owing to lack of adequate support from institutional structures. Gender studies are not among today's national research priorities and no national research programme directly devoted to equality exists at present. It should be noted, however, that Lausanne and Basel universities each have a chair of gender studies.

E. Access to scholarships and other study grants (art. 10 (d) of the Convention)

279. The granting of *individual public aid for purposes of education* is a matter for the cantons, the Confederation covering about 40% of the cantons' expenditure on scholarships and study grants. This means that there are 26 different systems of aid for purposes of education, each involving a different method of allocation, taking a different form and operating for a different length of time. Cantonal regulations on this subject contain no discriminatory provisions against women. Such provisions would contravene the prohibition of discrimination set forth in article 8, paragraph 2 Cst and would be indefensible before the Federal Supreme Court.

280. No systematic gender analysis of study grant holders exists. It is clear, however, that certain conditions governing the award of study grants can be disadvantageous to women. Thus, strict limits as to age or the period of time for which a grant can be awarded are particularly hard on women who have to interrupt or prolong their studies because of family obligations. Some cantons, while stipulating such limits, allow for exceptions in deserving cases. In some cases, the relevant provisions expressly indicate that women in that situation constitute an exception. The opportunity to choose a course of study eligible for a cantonal scholarship can also differ considerably between the sexes. Moreover, married scholarship holders cease to be eligible if their spouse has an income. The growing trend towards providing aids to education in the form of reimbursable loans represents a particular hardship for women who cannot enter employment after obtaining a diploma because of family responsibilities. Besides, women are generally less well paid than men and therefore find it harder to make regular repayments.

281. In order to guarantee women's equal access to scholarships and study grants, the Gender Equality Plan of Action (see para. 52 above) recommends that the cantons should make their age limits more flexible, in particular for women students with family obligations, and should issue gender-differentiated statistics. Upon the

cantons' presentation of their new scholarship and study grant regulations, the Confederation will give special attention to the question of de facto gender equality. The Swiss National Fund for Scientific Research must likewise take into consideration the family obligations of candidates of either sex when allocating grants for the encouragement of the next generation of research workers.

F. Access to continuing education and literacy programmes (art. 10 (e) of the Convention)

282. Replies to a survey conducted by the Federal Statistical Office in 1993 showed that continuing education enjoys a positive image among the whole of Switzerland's population. Large sectors of the population consider continuing professional education to be indispensable. Continuing education is also appreciated as a pleasant leisure activity and an occasion for meeting others. In Switzerland, 38% of adults (or 2 million persons) take some form of continuing education every year, but not all categories of the population are equally represented.

283. Among persons taking advantage of offers of professional advanced training, young Swiss men who already possess a qualification are in the lead. People in paid work are more inclined than others to take courses. Women in employment respond to offers of advanced professional training as often as their male colleagues, but they tend to take courses during their time off whereas men have more opportunities to do so in working hours. Employers contribute more rarely towards women's education costs and do not encourage women to take advanced courses as much as they do men. Among men, training in management and administration takes first place, while women tend to choose more general courses in such areas as science, medicine and languages.

284. Non-vocational continuing education opportunities have multiplied in the last decades. In 1999, twice as many women as men (18% as against 9%) were taking courses of this kind. Non-vocational continuing education often helps women to expand the stock of experience acquired in the home and to develop their personalities, but the qualifications obtained do not count for much on the labour market.

285. Adult education is an expanding market in Switzerland, even if an exact overview of the offer is not possible. The numerous syllabuses proposed by public and private educational establishments are difficult to classify and the usefulness of the diplomas obtained appears doubtful. Women without previous vocational training, of whom there are relatively many, find it difficult – for a variety of reasons – to obtain such qualifications on reaching adulthood. Possibilities of *a posteriori* basic training are few and far between, and continuing education remains closed to women without previous training. Moreover, women with family obligations often have neither time nor money to invest in basic or continuing education. Yet the Vocational Training Act[102] enables adults today to *take vocational training a posteriori* or to convert to a different trade and to obtain a Federal certificate of capacity by individualized means (art. 41 LPFr). Since 1995, the majority of persons registering for an end-of-apprenticeship examination have been women.

[102] Federal Act of 19 April 1979 on vocational training (LPFr), %S 412.10.

286. Faced with a dwindling labour market in the early 1990s, the Federal Council adopted, as part of a *campaign to promote continuing education*, a set of measures aimed at encouraging advanced professional/vocational training at all levels and in all fields. The intention was to improve the qualifications of the active population, thus counteracting the over-concentration of human resources in the production and service sectors. In particular, women wishing to return to work after temporarily leaving employment to take care of their families were encouraged to re-train. However, the economy measures adopted by the Confederation in 1994 have meant that no new steps in that direction have been undertaken since that date, those especially designed for women being particularly hard hit as a result. Programmes for the reinsertion of unemployed persons, adopted subsequently, have gone some way towards redressing the situation.

287. Until 1995, the Confederation supported specific projects for the promotion of women's return to employment within the framework of *continuing academic education*. Some of the courses are still on offer at the universities on a self-financing basis. The National Fund for Scientific Research has, since 1991, offered special grants to women wishing to resume professional activities in medicine and the natural sciences (Marie Heim-Voegtlin programme). Thirteen study grants for a total of 1.3 million Swiss francs were awarded in 1999.

288. Many cantons are encouraging women to resume employment through various measures, e.g. by supporting courses or advice and information centres, awarding special grants to women wishing to return to employment, or taking account of educational and other responsibilities assumed by women at home in the classification of posts and salaries.

289. After being forgotten for a long time, *illiteracy* has again become a problem in Switzerland in recent years. No reliable data are available on illiteracy according to the current United Nations definition. Studies on functional illiteracy in adults show a small but systematic deviation to the disadvantage of women at all levels (reading prose passages, comprehension of documents, use of figures). In all, 12.9% of adults in German Switzerland and 14.2% in French-speaking Switzerland appear to have serious difficulties in reading and understanding ordinary texts.[103]

290. According to a widely accepted estimate, there are 20 000 to 30 000 illiterate persons in Switzerland. The figure includes only adult Swiss citizens of both sexes who have completed their compulsory schooling but have not learned to read and write. The criteria used to define the reading and comprehension difficulties experienced suggest that the true figure may be higher. Internationally, the results obtained by Swiss women and men in the relevant tests are rated poor to average.[104]

291. General measures are adopted in Switzerland to improve the school results of all students, e.g. through the use of teaching aids, remedial or special classes, extending pre-school education, etc. Together with other OECD countries, Switzerland participates in an international programme designed to determine the extent to which students reaching the end of compulsory education have acquired the skills and knowledge needed in order to play an active role in society. In

[103] OECD, Regards sur l'éducation. Les indicateurs de l'OCDE, Paris 1996.

[104] Philipp Notter / Eva-Marie Bonerad / François Stoll, Lesen eine "Selbstverstaendlichkeit"? Schweizeer Bericht zum International Adult Literacy Survey, Berne 1999.

addition, various non-governmental organizations organize (partly with the local authorities' support) local courses for adults with reading difficulties.

292. Despite the lack of statistics, there is reason to believe that illiteracy in Switzerland is a more serious problem for women, especially foreign women, than for men. This is due to a number of factors, in particular lack of schooling in the countries of origin, a traditional environment hostile to women's literacy in certain social strata and certain countries, financial difficulties, the double burden of family and work, or a local or family environment that does not encourage women to keep up such educational attainments as they may possess. In this context, mention must be made of the many language courses for foreigners provided by the cantons and communes.

G. Female drop-out rates (art. 10 (f) of the Convention)

293. No studies or figures are available on this subject, but statistics relating to the universities indicate that more women than men drop out of higher education (35% as against 27.8%). Although the causes of the phenomenon have not been investigated, it is possible that the difference may be due to practical and financial hardships arising from having to combine motherhood and family obligations with university studies. The opening and development of child-care facilities, like those the Confederation is going to support actively at universities, could therefore have a positive impact on reducing female dropout rates.

H. Opportunities to participate actively in sports and physical education (art. 10 (g) of the Convention)

294. Article 68 Cst empowers the Confederation to promote sport, particularly sport education; to operate a sport school; and to legislate on the practice of sport by young people. The Gymnastics and Sports Act of 1972[105] makes these disciplines compulsory during compulsory education, as well as in vocational and secondary schools. These subjects are taught to students of both sexes and include, on average, three hours of sports a week. Various sports activities are also available to students on an optional basis, often in conjunction with those organized by private sport associations.

295. The Federal Commission for Sports, in association with the committee of experts on the teaching of gymnastics and sports in Swiss schools, has issued guidelines concerning *possibilities of mixed-sex and single-sex sports education.* Rather than perpetuating preconceived ideas about the respective abilities of boys and girls in this field, sports education will be based on the students' experience and interest. Sports education addressed to mixed-sex classes and groups of different ages and performance levels is a matter of great social importance.

296. "Youth + Sport" (J+S) is an institution operated jointly by the Confederation and the cantons with a view to encouraging sports activities among young people between the ages of 10 and 20. Its object is to stimulate the greatest possible number of young people to practise a sport and to receive training in the sport of their choice. Some 850,000 young people (including approximately 40% girls) participate

[105] Federal Act of 17 March 1992 on gymnastics and sports, RS 415.0.

in J+S programmes each year (1999: 883 934 participants, including 353 048 women).

297. Regarding women's access to sports activities, see also paras. 540 ff below.

I. Access to information in the field of health and family planning (art. 10 (h) of the Convention)

298. Questions relating to health protection, prevention of diseases and sex education are regularly discussed in Swiss schools in connection with different subjects (e.g. life sciences, biology), the forms varying depending on the students' age. Many sources of information are employed. Everywhere in Switzerland, and especially in the large cities, interested persons have free access to publications on these subjects as well as to advice centres open to the population in general or to special categories of individuals.

299. See also the section on art. 12 of the Convention, para. 451 ff.

J. Particularly disadvantaged categories of women

Handicapped women

300. Handicapped children receive special education based on therapeutic teaching methods.

301. The principal object of early special education (before compulsory schooling) of handicapped children is to apply therapeutic educational measures and to support the parents. During compulsory schooling, special education is dispensed principally in integrated classes at public schools and in special schools recognized and subsidized by the disablement insurance system. There are also medico-psychological services to provide assistance in fields such as speech therapy, psychomotor education or re-education and child psychology.

302. At the end of compulsory education, young handicapped people have opportunities to learn a trade. The Vocational Training Act[106] authorizes some easing of the conditions governing apprenticeships and end-of-apprenticeship examinations.

Migrant women

303. In 1999/2000 the proportion of foreign children attending school in Switzerland was 22%. This figure covers all levels of integration, from children born in Switzerland of second-generation foreign parents to those of newly arrived families, and includes students in Switzerland only for their period of study. The percentage of foreign students varies considerably between cantons. Whereas in Geneva there are classes with 77% of foreign students, in the canton of Obwald they account for only 2% of the student body. Overall, a third of compulsory school classes include a large number of students having a different culture or language, while one-tenth of classes are composed exclusively of Swiss children being taught in their mother tongue.

[106] Federal Act of 19 April 1978 on vocational training (LFPr), RS 412.10.

304. Little research has been done to date on the specific situation of foreign girl students and migrant women in the field of education. There can be no doubt, however, that the earlier these girls and women are integrated in the Swiss educational system, the better will be their prospects of completing a course of vocational training or advanced education. Efforts to integrate these categories of women vary greatly between cantons. The "16+" project of encouragement for apprenticeships (see para. 263 above) supports, inter alia, some specific projects designed to facilitate the access of young foreign women to vocational training. Young second-generation women migrants often face particular problems because they are torn between the conflicting roles attributed to their gender.

K. Implementation of the objectives of article 10 of the Convention in Switzerland's development cooperation

305. Swiss development cooperation endeavours to promote equal access for girls and boys to basic training programmes in its partner States. This means that girls ought in principle to attend school for as many years as boys. The sectoral basic training policy of 1996 sets out to give priority to the promotion of women's and girls' training by improving local infrastructures, encouraging training of teachers of both sexes, enhancing their awareness of gender issues, supporting the review of syllabuses and promoting the adoption of laws conducive to gender equality. Literacy programmes and informal training schemes for adults give particular attention to the situation of women with a view to enabling them to improve their skills and abilities and to participate in decision-making processes (e.g. in West Africa and in Pakistan).

306. The 1994 sectoral policy on vocational training includes women's education and training among its five "innovative priorities". In the intervening years, existing programmes have been modified and new ones developed in the light of new ideas concerning the role of social relations between the sexes in vocational training. Two aspects of these new ideas, in particular, have found reflection in practice. First, the division of a study course into modules over several years facilitates women's access to basic and supplementary training by making the stages easier to complete. In Bolivia, Peru and the countries of Central America this modular approach is accompanied by a targeted use of education vouchers. Second, efforts are made to supplement women's traditional employment in the textiles sector by training schemes in other sectors offering better employment prospects for the future. Since 1996 the gender problem is being tackled by the international working group set up to deal with vocational training in development cooperation, emphasis being placed on the importance of coordination between basic education and vocational training. The subject of employment and training in the unofficial sector, in which women are over-represented, is also raised with increasing frequency.

307. Lastly, the Swiss development cooperation policy in the field of study grants and courses is designed to encourage women's participation in training programmes organized in Switzerland.

Article 11 of the Convention – Elimination of discrimination in the field of employment

308. Regarding the right to work in Switzerland, see the initial report of Switzerland under the International Covenant on Economic, Social and Cultural Rights issued in 1996 (articles 6 to 9 of the Covenant, paras. 75 ff).

A. Equality of the right to work (art. 11, para. 1 (a) of the Convention)

309. Swiss law includes no provision expressly guaranteeing the right to work. Three initiatives proposing a constitutional guarantee of this right have been rejected by popular vote. Accordingly, the right to work in the sense of a positive State service does not, as such, exist in the Swiss legal order. However, the right to work is guaranteed in some cantonal constitutions, in particular as a goal of social policy.[107] While the Federal Constitution does not set forth a right to work, it explicitly recognizes the right to work as an element of economic freedom, namely, freedom to choose one's profession and to enjoy free access to and free exercise of economic activity. This constitutional right exists for both women and men. Article 8, paragraph 3 Cst guarantees gender equality and mandates the lawmaker to ensure equality in law and in fact, particularly in family, education and work.

310. Article 94 Cst mandates the Confederation and the cantons to contribute to "the economic security of the population". Under article 100 Cst the Confederation must also, as part of its economic policy, take measures "to prevent and fight unemployment". Under the heading of "Social Goals", article 41, paragraph 1(d) Cst provides that "every person capable of working shall sustain himself or herself through working under fair and adequate conditions".

B. Overview of applicable law

Constitutional law on equality of pay

311. Since 1981, equality of pay between women and men has been governed by article 4, paragraph 2 oCst, subsequently replaced by article 8, paragraph 3 Cst, third sentence: "Men and women shall have the right to equal pay for work of equal value". This provision guarantees equal pay for equal work and, at the same time, for work that is different but of equal value. It constitutes a basic right that is directly applicable and is also valid in private law. The right to equal pay is an individual right that can be invoked in justice.

312. Case law relating to article 4 oCst was sparse. The majority of cases involved women employed by cantonal or communal administrations (an actress, a group of nurses, some kindergarten teachers, some teachers of domestic economy). Only few cases involved employees in the private sector. The difficulty of proving the facts, especially as regards the equal value of the work performed, lack of adequate

[107] Canton of Solothurn, art. 22(d) (social goals); Constitution of the canton of Basel Land, paragraph 17(b) and (c); Constitution of the canton of Jura, art. 19 (right to work); Constitution of the canton of Berne, art. 30(a) (social goals).

protection against dismissal, and the length and cost of legal proceedings are the main reasons for women's continuing reluctance to bring actions for equal pay.[108]

313. The Equality Act of 1996 (see paras. 314 ff below) reiterates the prohibition of wage discrimination in its article 3. The Act represents an important advance in that it facilitates the legal implementation of claims on this score. But it fails to specify what differences in pay are objectively lawful. In some recent rulings the Federal Supreme Court has taken the view that pay differentiation may be based on criteria that can influence the value of the work itself, such as training, seniority, qualifications, experience, range of duties performed, performance or risk.[109] Pay differences can also be warranted by factors that do not directly concern the worker's activities but derive from considerations of a social nature, e.g. family responsibilities or age.[110] Lastly, the case law of the Federal Supreme Court allows that the general economic situation may constitute a reason for pay differentiation in so far as such differentiation genuinely meets a need of the employer enterprise.[111]

Equality Act

Specific prohibition of discrimination at work

314. The *Equality Act,*[112] in force since 1996, is based on the constitutional mandate to ensure equality in law and in fact, particularly in the field of work. Its goal is to "promote de facto equality between women and men" (art. 1 LEg), and work relations are its special concern. It applies to work relations in private law as well as to those in public law established by the Confederation, the cantons and the communes (art. 2 LEg). Article 3 sets forth a general prohibition of discrimination: disadvantaging women or men workers, directly or indirectly, by reason of their gender is prohibited. Sexual harassment is deemed to constitute discrimination (art. 4 LEg).

315. The prohibition of all discrimination applies, in particular, to recruitment, assignment of duties, arrangements as to conditions of work, professional/vocational and advanced training, promotion and termination of the work relationship (art. 3 LEg). Persons who suffer discrimination can, in particular, request the court to prevent, prohibit or discontinue it (art. 5.1 LEg). Where discrimination consists in refusal to recruit or termination of the work relationship in private law, the victim can only claim payment of damages (art. 5.2 LEg). Rights to damages with interest and to reparation of moral injury, as well as claims arising from more advantageous contractual provisions, are reserved (art. 5.5 LEg).

316. The Equality Act goes some way towards facilitating the judicial implementation of the prohibition of all discrimination in the field of work. It alleviates the burden of proof, in that the plaintiff is no longer obliged to provide

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[108] Final report of working group on equal pay established by the Federal Department of Justice and Police, Berne, 1998. It should be noted, however, that today, under art. 343 CO, legal proceedings arising from labour contracts are simple, rapid and, in principle, free.

[109] ATF 125 III 368, 373; 124 II 409; 124 II 436 with footnotes.

[110] ATF 125 III 368, 373; 118 Ia 35; 117 Ia 270.

[111] ATF 125 II 368, 373, 377; 125 I 71; 118 Ia 35; 113 Ia 107.

[112] Federal Act of 24 March 1995 on equality between women and men (Equality Act, LEg), RS 151.1; also see Margrith Bigler-Eggenberger / Claudia Kaufmann (ed.), Commentaire de la loi sur l'égalité, Lausanne 2000.

evidence of the alleged violation but must only establish its probable existence. The employer then has a possibility to prove that the inequality of treatment alleged by the plaintiff does not exist, or else that it is based on objective grounds entirely unrelated to gender (art. 6 LEg). The Federal Supreme Court did not wait for the Act's entry into force to state in its case law that it was up to the employer to prove the existence of objective grounds in justification of an inequality of treatment.[113]

317. This alleviation of the burden of proof does not, however, apply either to discriminatory acts relating to recruitment or refusal to recruit or to acts of sexual harassment. Yet it is precisely in connection with such acts that the victim will have particular difficulty in providing evidence of discriminatory treatment. Nevertheless, the fear that expanding the alleviation of the burden of proof, in particular, to cases of sexual harassment, could open the way to abuses won the day when the Act was considered in Parliament, for in that case the employer would have had to provide evidence of a negative fact. Even so, it is clear from documents reflecting the Act's history that the employer is expected to participate actively in the evidential procedure.[114]

318. Another provision designed to facilitate bringing court actions is the recognition of the right of professional organizations and associations concerned with the promotion of gender equality to bring an action (art. 7 LEg). Such organizations can request the court to find that discrimination has occurred in cases whose outcome appears likely to affect, if only virtually, a considerable number of workers.[115]

319. Persons whose application for a post has been rejected can request the employer for *a statement setting out in writing the reasons for the rejection* (art. 8 LEg).

320. Retaliatory dismissals are revocable. Protection against dismissal remains in force throughout the period of the in-house appeals procedure, the conciliation procedure or the judicial proceedings, as well as for six months following their termination (art. 10 LEg).

321. The Act requires the cantons to appoint, in the case of work relations in private law, conciliation offices to advise the parties free of charge and help them to settle the matter out of court (art. 11 LEg).

322. The special provisions of article 343 CO applicable to litigation under labour law also apply to cases involving discrimination. The cantons must therefore institute a *simple, rapid and free procedure* for such litigation and the judge must *determine the facts proprio motu* (doctrine of proprio motu) and freely assess those facts. Furthermore, the cantons cannot rule out proceedings in writing or the right of the parties to be represented (art. 12 LEg).

323. Several judicial decisions under the Equality Act have been taken by courts of first instance since its entry into force in 1996. Some of these decisions have given rise to appeals. The Federal Supreme Court has already pronounced several

[113] ATF 113 Ia 166, preambular paragraph 4a.

[114] See the record of parliamentary debates in: Official bulletin of the National Council, 1994, pp. 228 ff, and Official Bulletin of the Council of States, 1994, pp. 808 ff.

[115] ATF 125 I 71.

judgments under the Equality Act,[116] and further cases are pending. Although no concrete data are yet available, there is every reason to believe that a large number of cases have already been settled with the help of the obligatory conciliation offices and through out-of-court transactions.

324. Lastly, the Equality Act provides a legal basis for the support of equality encouragement programmes and advisory services in the field of work, as well as programmes and services designed to assist women and men wishing to return to work after an interruption due to family reasons (arts. 14 and 14 LEg).

Labour Act

325. The Labour Act[117] applies to all public and private enterprises, with a certain number of exceptions. For example, it does not apply to family businesses, public administrations, agricultural and horticultural enterprises, fisheries and private households; likewise, certain workers are excluded from its field of application, in particular ecclesiastics, crews of Swiss air transport companies, employees in senior management positions, independent artists, scientists, assistant doctors, private school teachers, teachers, instructors, social assistants and supervisors in certain establishments, and home workers. The health protection provisions (in particular that concerning health protection during maternity, art. 35 LTr) are, however, fully applicable, in particular, to administrations and to employees in senior management positions, independent artists, scientists and assistant doctors. This Act, which regulates working and rest hours as well as the protection of workers of both sexes, contains special provisions relating to the protection of pregnant women and nursing mothers. Their conditions of work must be arranged in such a way as not to endanger their health or the health of their child (art. 35 of the Labour Act; see also paras. 445 ff below). The definition of working and rest hours must take into account, in particular, *the family responsibilities of women and men workers*. Workers cannot be required to work overtime without their consent and are entitled, at their request, to a midday break of at least one and a half hours. Lastly, men and women workers with family obligations can, upon presentation of a medical certificate, obtain up to three days of leave in order to take care of a sick child (art. 36 LTr).

326. Before the review of the Labour Act in 1998, *night work and Sunday work* were prohibited for women in industry. The Federal Supreme Court had criticized this rule as being incompatible with the principle of gender equality.[118] The review of the Act eliminated this formal inequality and Switzerland denounced ILO Convention No. 89, which contains a general prohibition of night work for women. Switzerland has not ratified ILO Convention No. 156, which requires signatory States to adopt measures on behalf of men and women workers with family responsibilities.

[116] ATF 125 I 171, 125 II 385, 125 II 530, 125 II 541, 125 III 368, 124 II 409, 124 II 436, 124 II 529.

[117] Federal Act of 13 March 1964 on labour in industry, crafts and trade (Labour Act), RS 822.11 (version of 2 August 2000).

[118] ATF 116 Ib 283 f.

The law on labour agreements

327. Reference should also be made to the general provisions of the law on labour agreements, the central elements of which appear in articles 319 ff of the Swiss Code of Obligations (CO). The article does not distinguish between women and men. The legal provisions on labour agreements leave a possibility of regulating work relations by individual contracts, but they impose strict limits in the form of binding rules and propose optional provisions to settle matters not covered by the individual contract. Moreover, the Confederation and the cantons can declare that a collective labour agreement concluded between employers' and workers' associations (social partners) in a particular sector also applies to employers and men and women workers within that sector who have not subscribed to the collective agreement.[119]

C. Access to the labour market, conditions of employment and recurrent training (art. 11, paragraph 1(a), (b) and (c) of the Convention)

De facto situation

Exercise of a paid activity and degree of occupation (percentage of full time contracted for)

328. The Federal Statistical Office regularly carries out surveys of the working-age population (ESPA) based on random samples. ESPA shows a steady rise in the number of working women in recent years. However, regional differences are greater among women than men, which suggests that the influence of stereotype ideas concerning women's roles on the number of working women varies from one region to another.

329. *Women's paid work* differs from men's in several respects, in particular the proportion of full-time and the number of hours worked, position in the profession, etc. These differences must be viewed in the broader context of the relative proportions of paid and unpaid work. Certain characteristics of women's paid work must be considered in relation to their family situation, the type of household they live in and the work they do in the home. Women still perform the major part of family and domestic duties (cf. para. 344 below).

330. The place of women on the Swiss labour market has developed steadily since the Second World War. Even during the economic slowdown of the 1990s women did not withdraw from the labour market, although the proportion of working women is always distinctly smaller than men's. Between 1991 and 2000 the proportion of working women rose by 0.8 points to reach 57.8%; for men, on the other hand, the figure fell by 3.1 points to 77.8%. The proportion of women among all economically active persons rose from 42.6% to 44%. The increase is, however, due to an increase in number of women working part-time (+ 15.8%), the proportion of women in full-time employment diminishing over the same period. Related to the total population of working age (between 15 and 61 years for women and between 15 and 64 years for men) the proportion of men not exercising a paid activity (1%) remains markedly below that of women in the same situation (25%).

[119] Federal Act of 28 September 1956 extending the scope of application of the collective labour agreement, RS 221.2151.311.

331. Because of the general rise in the educational level and for economic reasons, the participation of middle-aged women in active life has progressed strongly; in particular, there are more and more women with children who go out to work. The number of women combining family life with paid work is steadily rising. In the 1990s, about 40% of women in employment stopped work to have their first child, while the other 60% went on working. However, many women with children work part-time, in particular owing to the widespread lack of child-care facilities (see para. 441 below).

332. Gender-differentiated statistics on *security of employment* are not available.

Position within the profession

333. The modalities of women's and men's paid work are not the same. While women are increasingly to be found in intellectual and scientific professions and in executive positions, the number of women in posts of responsibility continues to be smaller than that of men. Overall, their professional status is below that of men; 18% of men (as against 11% of women) are self-employed; 37% of men and less than a quarter of women (22.6%) are salaried executives, meaning that they form part of their companies' managerial staff or direct other workers; on the other hand, 62% of women (as against 43.1% of men) are wage workers without managerial functions. This unequal breakdown is only partly due to different educational levels; a difference in professional status is also noted where the educational level is the same. The proportion of women among wage workers without managerial functions is larger at all levels. These differences are mainly due to the fact that women still bear the major share of family responsibilities, which are difficult to combine with a working career.

334. A look at the working-age population in each of the three major sectors of the economy – primary (agriculture, stock-breeding, forestry), secondary (industry and crafts) and tertiary (services) – reveals considerable gender differences that have remained relatively unchanged in the past twenty years. Thus, 83% of women are employed in the tertiary sector; men, too, are strongly represented in that sector (60%), but not with the same degree of concentration. 34% of men work in industry and crafts; according to the ISCO classification, 24% of men exercise a manual or similar trade, 19% are in teaching or similar professions, and 18% are technicians. Women work principally as technicians (24%), in commerce (23%) and in the field of services and selling (21%). According to the NOGA classification, men are employed principally in the transforming industries (23%), real estate and renting, computers and R&D (12%) and in the building industry (11%). Women are employed chiefly in health and social services (18%), business (17%) and other services (11%), and in the transforming industries (10%).

Degree of occupation (proportion of full-time work contracted for)

335. Considerable differences exist today between women's and men's degrees of occupation. Part-time work remains a typically female form of employment. In 1999, more than 82% of all persons working part-time in Switzerland were women. Whereas the pattern of men's employment is homogeneous and generally oriented towards full-time work at all ages, the situation with regard to women is highly heterogeneous. The number of women working part-time or full-time varies with their age. On the whole, women aged over 25 tend to work part-time, with degrees

of occupation varying widely depending on their personal and family situation. After rising by 15.8% between 1990 and 1999, the proportion of women working part-time declined slightly in 2000 (by 1.9%), the opposite trend being noted among men. Foreign women work part-time far less than Swiss women (37.8% as against 52%).

336. Persons in part-time employment (degree of occupation < 89%), %

	1991	*1999*	*2000*
Men	7.8	9.4	10.3
Women	49.2	54.6	53.5
Total	**25.4**	**29.4**	**29.3**

337. In households without children aged below 15, the proportion of women working full time is greater, whereas women with children, if they go out to work at all, tend to work part-time. Men's degree of occupation remains practically unchanged by the presence of children in the household. Depending on the degree of occupation, security of employment offered by part-time work may be less good. Training, career and promotion opportunities are also more limited. Social insurance against occupational hazards may also be affected.

338. According to the Swiss survey of the working-age population (ESPA) for the year 2000, many active persons would like to increase their degree of occupation. Despite the good economic situation of recent months, their number remains unchanged: 8.7% of working-age persons, 78% of them women, consider themselves underemployed.

Unemployment

339. Switzerland has not escaped the unemployment problems of the 1990s. Those particularly affected are foreigners and the unskilled. Geographically, unemployment is more marked in French-speaking and Italian-speaking Switzerland. Differences between age groups, on the other hand, are only slight; young people, for instance, do not appear on unemployment registers more often than their elders. The unemployment rate rose from 0.5% in 1989 to 4.7% in 1994. However, the number of persons in employment rose by 85 000 over the same period owing to strong immigration. After reaching a peak in 1997 (5.2% overall, 5.7% women), the unemployment rate fell to 3.9% in 1998 (4.4% women). Today, women continue to be harder hit by unemployment than men (May 2001: 2.1% women as against 1.4% men). Foreign women account for over a third of all women registered as employed and are thus particularly affected.

340. The respective proportions of women and men in different categories of unemployed persons vary. Only 35% of unemployed women, as against 65% of unemployed men, register at a labour exchange and receive unemployment benefits. The risk of unemployment is far higher for women, yet they make far less use of available assistance facilities. This paradoxical situation can be explained by structural factors, e.g. such facts as that women have insufficient knowledge of their rights, that women's right to work is far from widely accepted, that an adequate income may be earned by the husband or partner, that family obligations make it harder for women to meet the conditions for receiving unemployment benefits (e.g. the obligation to accept an offer of employment immediately), and, lastly, the over-

representation of women among the long-term unemployed whose right to unemployment benefits is about to expire or has already done so.

Conditions of employment

341. Some women (including a particularly large number of foreign women) accept conditions that are untypical and often precarious, with timetables, working hours and work contracts not in line with current standards (e.g. women working from home or doing occasional work, those employed in a private residence, self-employed women working less than 20 hours per week, women wage workers employed for less than 6 hours a week). Home work, which is governed by provisions of the Civil Code and the Labour Act relating to conditions of employment, is further regulated by a special Act[120] (for the possible repercussions of such untypical conditions on protection under the social insurance system, see para. 393 below). On-call working has increased in recent years, especially among women, despite its economic uncertainty and the impossibility of planning ahead that is particularly difficult to reconcile with family obligations.

Basic and advanced training

342. Almost all young women today take some form of post-compulsory education or *vocational training* as a matter of course, even if gender differences persist in the choice of profession or trade (see paras. 253 ff above in connection with article 10).

343. Swiss law does not grant a right to continuing education to workers of either sex. But issues relating to *advanced training* are regulated in collective labour agreements, and many companies go beyond those agreements in promoting advanced training for their employees. The general situation regarding advanced training remains, however, unsatisfactory in many respects. The Federal Council has adopted, in the form of a postulate, a motion on this issue submitted by Mr. Rechsteiner of the National Council and is going to consider whether a provision on continuing (recurrent) training should be incorporated among the provisions of the Code of Obligations concerning labour agreements.

Unpaid work and efforts to improve its standing

344. In Switzerland, the question of unpaid work (family and domestic duties, voluntary work, honorary functions, unpaid informal activities, etc.) has only recently begun to be considered from the gender point of view. So far as family and domestic duties are concerned, a study by the Federal Statistical Office shows that in 1999 the traditional pattern of work-sharing still prevailed.[121] In 72% of households consisting only of a couple and in 90% of those consisting of a couple and children under 15, the woman took care of the bulk of household and family duties. Even among women in paid work, only 25% can count on equivalent assistance from their partner. Women work twice as long in the home and for the family, women with children spending 54 hours a week on such tasks (as against 23 hours for men with

[120] Federal Act of 20 March 1981 on work performed at home, RS 822.31.

[121] Federal Statistical Office, Du travail mais pas de salaire. Le temps consacré aux tâches domestiques et familiales, aux activités honorifiques et bénévoles et aux activités d'entraide, Neuchâtel 1999.

children). Young women aged between 15 and 24 spend an average of 13 hours a week helping at home, their brothers only 8 hours. Single parents form one of the categories of persons for whom household and family duties represent the second most demanding activity. Together with what is often a highly exacting outside job, this makes for a life of considerable stress for persons in such a situation. Although, despite the unequal distribution of roles, men's and women's workloads in similar posts are comparable, men devote a great deal more of their time to paid activities.

345. A recent study by the Federal Statistical Office[122] revealed the existence of marked gender differences in the field of voluntary work. 26% of Switzerland's permanently resident population pursues at least one unpaid voluntary activity as a member of an organization or institution. Men are more strongly represented in this category (29% as against 20% of women). Whereas men tend to work in sports or cultural associations, in politics or in organizations representing group interests, women generally prefer social, charity and church activities. In this field, too, considerable differences exist in the exercise of directorial functions, which are more rarely performed by women.

346. Informal unpaid work, on the other hand, concerns women far more than men. Women are more apt to join mutual assistance networks. 29% of women (as against 19% of men) provide some form of assistance to persons outside their household (neighbourhood projects, taking care of other people's children, other minor forms of assistance).

347. In Switzerland, the value of unpaid work as compared with its economic and social importance is clearly underestimated. In 1999 the Federal Statistical Office carried out a study on the cash value attributed to unpaid work.[123] Different methods of evaluation used in Switzerland were analysed and the value of unpaid work performed annually was found to lie at 215 or at 139 billion Swiss francs, depending on the method used. In the former case, women's contribution to value creation was estimated to be twice that of men; in the latter, it was still significantly greater (23% as against 14%).

348. A study of the Federal Commission for Women's Issues published in 1997 showed, inter alia, that a better distribution of paid and unpaid work between women and men would be a key factor in achieving equality.[124]

Measures adopted by the Confederation and the cantons

General measures

349. The Equality Act authorizes the Confederation to grant financial assistance to public and private institutions conducting *programmes for the promotion of equality at work* or to conduct such programmes itself. The programmes may be focused on training and advanced training, or else they may seek to ensure "better representation of both sexes in employment, in all functions and at all levels" or to facilitate combining work and family obligations (art. 14, para. 2 LEg). Support is

[122] Federal Statistical Office, Le travail bénévole en Suisse, Neuchâtel 2001.

[123] Federal Statistical Office, Evaluation monétaire du travail non rémunéré: une analyse empirique pour la Suisse basée sur la population active, Neuchâtel 1999.

[124] Federal Commission for Women's Issues, Weniger ist mehr. Konzepte zur Umverteilung von Arbeit zwischen den Geschlechtern, Berne 1997.

channelled towards innovative and specific projects with sustainable effects. The Confederation also assists private institutions, inter alia those advising and informing women on matters relating to their working lives. Between 1996 and 2000, a total of 13.2 million Swiss francs were spent on financial aid under the Equality Act, 176 out of 341 applications for subsidies being accepted.[125]

350. As mentioned earlier in connection with vocational training, the Federal Council has adopted a number of measures to encourage women to take *training courses*. Measures to encourage the next generation of skilled workers and to improve the supply of apprenticeship places, and in particular the Decision adopted on that subject, will make for the gradual reduction of gender segregation on the labour market (see paras. 262 ff above concerning article 10 of the Convention).

351. For measures taken by the Confederation to avert the risk of unemployment and to promote women's integration and reintegration in the world of work, see para. 410 below.

352. For measures to encourage advanced vocational training, see paras. 282 ff above.

353. The Federal Statistical Office will pursue and intensify its efforts to evaluate unpaid work, in particular domestic duties, as part of the measures the Confederation intends to take with a view to promoting women's economic independence.

The Confederation and the cantons in their capacity as employers

354. In its capacity as an employer, the Confederation strives to improve women's representation and professional status within the Federal administration. Directives issued by the Federal Council in 1991 concerning improvement of the representation and professional status of female staff in the general administration of the Confederation stipulate that women must *benefit from targeted promotion in the areas of recruitment, promotion, allocation of apprenticeship places and advanced training*.

355. The Confederation's employment offers must be addressed explicitly to both sexes. Selection criteria such as ability to work in a team, possession of negotiating skills and experience in a diversity of fields must be placed on an equal footing with such criteria as ability to issue orders, a compelling personality or long experience in a particular profession, which, given the existing role patterns, tend to reflect male rather than female characteristics. An applicant cannot be expected to hold a military rank unless that is essential for the performance of the task in question. If women are under-represented in a post within a major administrative unit, the job offer must indicate that applications from women will be particularly appreciated. As many women as men must, if possible, be interviewed for the post. Given equal qualifications, applications by women must receive priority until women are no longer under-represented in the administration. In deciding whether or not qualifications are equal, consideration must be given not only to training and professional experience but also to extra-professional activities, such as upbringing of children or social work. Priority must be given to women's applications (again,

[125] Federal Bureau for Gender Equality, Demandes financées 1996/97; Requêtes acceptées 1998; Requêtes acceptées 1999; Requêtes acceptées 2000.

subject to the equal qualifications requirement), especially in the allocation of apprenticeship places, until parity has been attained in the sector concerned.

356. Part-time work must be encouraged, especially in higher positions. Career development must not, however, be affected.

357. Women, whether working full-time or part-time, must be systematically and personally informed by their superiors of *advanced training opportunities* and encouraged to take advantage of such information. General training courses must be open to women possessing the abilities needed to participate and wishing to do so, without reference to the normally applied criterion of being in one of the higher wage categories. Formerly employed women and those currently on leave who wish to return to work can participate in suitable advanced training courses. The topics of gender equality and promotion opportunities for women are discussed by the Federal administration in all basic training courses and in those advanced training courses that lend themselves thereto. Special courses on these topics are also provided. For as long as parity has not been achieved, women must be appointed (subject, of course, to the equal qualifications condition) as lecturers for all recurrent training courses. This applies, in particular, to subjects hitherto taught essentially by men, e.g. in management seminars. Today it is considered normal for women to run such courses.

358. Federal departments and offices are required to develop and implement *programmes for the advancement of women* and to report thereon at four-yearly intervals. A report of the Federal Office of Personnel on the second advancement of women period (1996-1999), published in 2000, shows that a good two-thirds of the units evaluated had developed programmes for the advancement of women, which were already in operation in a little over half of the offices. The intensity and success of their implementation varies from one unit to another. When approving the evaluation report, the Federal Council issued a series of directives to ensure that greater efforts will be made in the equal opportunities field; in particular, it instructed the administration to increase the proportion of women in executive grades by five points by the year 2003.

359. The "Gender Equality" plan of action approved by the Federal Council in the follow-up to the 1995 World Conference on Women includes a number of measures designed to improve the future implementation of the Federal Council's directives. A central monitoring apparatus, in particular, is to be set up with a view to identifying and recording qualitative advances. Moreover, equality and advancement of women are to be regarded as important management tasks and included among the promotion criteria for executive staff.

360. Many cantonal and communal administrations are also adopting targeted measures designed to raise women's professional status and to enlarge the proportion of women in responsible positions. Most of the cantons have adopted separate measures or whole sets of measures of various kinds (acts, directives, instructions, comprehensive programmes of implementation of measures relating to equal opportunities or advanced training, programmes of government action, projects of partial administrative reform). Different strategies are used to encourage the recruitment and selection of female staff (neutral wording of job announcements, redefinition of conditions for application and of selection criteria, new job descriptions, and sometimes – but this is less common – priority for women applicants with equal qualifications). Emphasis is also placed on offers of specific

training and advice (basic and recurrent training on topics related to women's issues or gender equality, management courses specially designed for women, tutoring, advice on returning to work and on career management) and new systems of work organization (in particular part-time work, calculation of pay on an annual pro rata basis, flexible working hours, etc.) Some cantons have recently begun to take an interest in the problem of reconciling work with family life, which concerns women more often than men. They are trying to find adequate organizational and institutional solutions, e.g. by providing the necessary extra-familial services or by introducing more flexible working hours. Surveys are to be carried out in order to monitor the first results of these efforts, especially in relation to administrative reform projects. Two cantons (Basel City and Berne) report regularly on progress being made in this area.

D. The special case of sexual harassment at the workplace

361. Several laws refer to the prevention and punishment of various forms of violence at the workplace:

- The Swiss *Penal Code*[126] punishes certain forms of sexual violence, in particular at the workplace. Thus, article 193 CPS provides for imprisonment of whoever, by taking advantage of the victim's distressed state, of a dependence tie arising from the work relationship or of any other kind of dependence relationship, constrains the victim to commit or undergo an act of a sexual nature. Article 198 CPS provides, moreover, for the prosecution (upon complaint) of anyone alleged to have importuned a person through sexual interference or the use of obscene language.

- The legal provisions relating to the *work contract* require employers to respect and protect the personality of workers of either sex, in particular against sexual harassment (art. 328, para. 1 CO).[127]

- Article 6, para. 1 of the Labour Act requires employers to take the necessary measures to protect the personal integrity of persons employed by them.

- The *Equality Act* considers sexual harassment to constitute a discriminatory act. Sexual harassment is defined as "any importunate conduct of a sexual nature or other gender-based conduct that infringes a person's dignity at his or her workplace". This definition includes, in particular, "making threats, promising advantages, imposing constraints or exercising pressure of any kind on a person with a view to obtaining favours of a sexual nature" (art. 4 LEg). The Equality Act allows victims to assert their right to prevent a discriminatory act or to have it stopped directly before the courts. The Act provides that in the event of sexual harassment employers must pay damages to the victim unless they can prove that they took such measures as were "called for by experience, appropriate to the circumstances" and could "in fairness be required of them" to prevent the acts in question. The amount of damages, which is determined in the light of all the circumstances, may not exceed an amount corresponding to six months of the average Swiss wage

[126] Swiss Penal Code of 21 December 1937 (CPS), RS 311.00.

[127] Federal Act of 30 March 1911 supplementing the Swiss Civil Code (Book Five: Law of Obligations), CO, RS 220.

(art. 5 LEg). A few cases of sexual harassment have come before the cantonal courts and the Federal Supreme Court in the last few years. The Federal Supreme Court has confirmed, in particular, that sexist remarks and obscene or embarrassing comments fall within the definition of sexual harassment.[128]

- The Equality Act also enables the Confederation to support programmes designed, inter alia, to combat sexual harassment at the workplace (art. 14 LEg).

362. Public administrations are also faced with this problem in their capacity as employers. Several decentralized organizational units of the Confederation's general administration have adopted measures in this connection in the past few years. The Federal Office of Personnel has organized advanced training courses on this issue for women "equality delegates" employed by the general administration. A set of means of preventing and combating sexual harassment at the workplace has been placed at the disposal of senior staff empowered to act in such matters (executives, senior personnel officers).

363. Many cantons also show willingness to take specific measures to combat the *phenomenon of mobbing and sexual harassment at the workplace*. The approach chosen varies from canton to canton, ranging from information and training sessions devoted to these issues to the adoption of directives, instructions and service memoranda and the establishment of "confidence groups" to advise victims and possibly to suggest action against perpetrators.

E. Remuneration (art. 11, para. 1 (d) of the Convention)

De facto situation

364. Although wage disparities between women and men have diminished slightly over the past ten years, considerable differences in remuneration still exist in Switzerland today. According to statistics, women's wages in the private sector are, on average, 21.5% below those of men. Differences in remuneration are considerably less marked in the public sector, where they fell from 13% in 1994 to 10% in 1998.

365. Women receive a lower wage even where they occupy posts involving the same level of responsibility. The gender difference actually tends to grow together with the level of responsibility. Depending on the education or training they have received, women earn between 16% (vocational training or apprenticeship, advanced vocational training) and 22% (university, advanced academic studies) less than men. The difference varies within a similar range depending on their position within the hierarchy, from 16% at junior executive level to 22% at middle-range or senior executive level. Thus, a woman holding a university diploma and employed in a middle-range or senior executive post earns, on average, a salary 24% below that of

[128] See, in particular, 126 III 395.

her male colleagues, while in the case of women who have completed an apprenticeship the difference is only 19%.[129]

366. The table below shows the breakdown by gender (in %) of full-time gross monthly wages in the private and public sectors.

Gross monthly wage	*Total*	*Women*	*Men*
0-3000	3.5	8.7	1.6
3001-5000	36.7	56.0	29.8
5001-7000	35.6	25.0	39.4
7001-10 000	16.9	8.5	20.0
>10 000	7.3	1.8	9.2
Total	**100.0**	**100.0**	**100.0**

Source: Federal Statistical Office, Survey of the pattern of wages in Switzerland, 1998.

367. The table shows that 64.7% of full-time women workers earn less than 5000 Swiss francs a month, while only 31.4% of men fall within that wage category. The difference is even greater in the lowest wage category, 8.7% of full-time women workers earning less than 3000 Swiss francs a month as against only 1.6% of men. This category very often includes foreign women, especially those from southern Europe or from non-European countries. At the other end of the scale, nearly 29.2% of men and only 10.3% of women earn more than 7000 francs a month, while only 1.8% of women (as against 9.2% of men) are to be found in the highest wage category.

Measures adopted by the Confederation

Development of work evaluation criteria

368. Implementation of the "equal wage for work of equal value" principle necessitates comparing jobs in order to determine whether or not they are of equal value. Specialists have been working for several years on methods of arriving at a system of *gender-neutral work evaluation* and, by that token, at non-discriminatory systems of remuneration. In 1996 the Federal Bureau of Gender Equality published a description of certain non-discriminatory work evaluation techniques.[130] In future, wage differences and job evaluation problems will be dealt with and analysed more intensively, job evaluation systems based on gender-impartial criteria will be developed, and the pattern of wages in typically female professions will be studied. In order to avoid new cases of discrimination against women arising from the proliferation of the payment on merit system, it will be necessary, in addition, to develop techniques for evaluating the performance of staff of both sexes taking account of factors specific to each sex.

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[129] On this subject, see also Y. Flueckiger / J. Ramirez, Analyse comparative des salaires entre les hommes et les femmes sur la base de la LSE 1994 et 1996, Observatoire universitaire de l'emploi, Geneva. The Federal Office for Gender Equality and the Federal Statistical Office have published a summary of this work under the title "Vers l'égalité des salaires?", Berne and Neuchâtel, 2000.

[130] Federal Bureau for Gender Equality, L'égalité des salaires en pratique. Deux outils d'évaluation du travail non discriminatoire à l'egard des sexes, Zurich 1996.

369. The *Federal administration* ought to introduce a new *job evaluation system* based on a redefinition of requirements for jobs traditionally held by women. The existing system of remuneration should be checked to see whether it contains direct or indirect discrimination mechanisms, and, if necessary, modified. Some cantonal administrations have also undertaken (or are to undertake as part of a general reform of their remuneration or job classification systems) a review of their job evaluation systems using gender-impartial criteria (using the ABAKABA model developed by the Federal Bureau for Gender Equality). Projects of this kind exist, in particular, in the cantons of Aargau and Fribourg.

Case law of the Federal Supreme Court concerning wage equality

370. In the 20 years following the introduction of article 4, para. 2 oCst/article 8, para. 3 Cst, some 65 cases involving wage equality were brought before the Federal Supreme Court. Most of them concerned remuneration in the public sector and were complaints of discrimination between "equivalent" professions. Generally, therefore, they were based on criticism of the classification of traditional female occupations (nurses, kindergarten teachers, domestic economy and handicrafts teachers, speech therapists) in the public sector's general system of remuneration. Only a few cases related to different wages for equal work, and only two to labour relations in the private sector. In any event, the Federal Supreme Court is somewhat reluctant to interfere with the freedom enjoyed by the cantons in connection with the evaluation and classification of specific posts in their respective remuneration systems.

371. A difference in wages between women and men is objectively well-founded (and therefore not discriminatory) if it is based on objective criteria and is not motivated by gender-related considerations. Causes may relate to the work itself and its execution (training, qualifications, experience). In addition, there may be causes of an individual nature, such as performance, age or seniority. Lastly, the Federal Supreme Court also refers to causes of a social nature, such as family obligations. In its most recent case law, the Federal Supreme Court also mentions causes of an economic nature, such as the market situation or particular aspects thereof. It explains, however, that such causes are acceptable only within narrow limits and only where applied equally to workers of both sexes.[131] The market criterion tends to be more advantageous to male workers because their position on the labour market is stronger in the first place.

F. Right to social security (art. 11, para. 1(e) of the Convention)

General presentation of the social security system

372. The Swiss *social security system* was built up gradually and with a degree of pragmatism, owing in particular to Switzerland's federalist structure and its semi-direct democracy system. Today it looks like a mosaic in which each insurance sector preserves its own characteristics (in particular as regards the range of persons insured and the method of funding). The following benefits are paid by various sectors of the Swiss social security system:

[131] BGE 125 III 368, preambular paragraph 5c.

- Reimbursement of medical and pharmaceutical costs;
- Sickness benefits;
- Unemployment benefits;
- Old-age pensions;
- Benefits in the event of an accident at work or an occupational disease;
- Family benefits;
- Disablement pensions; and
- Surviving relatives' pensions.

373. Maternity benefits are granted in accordance with the Health Insurance Act (see paras. 400 and 437 ff below).

Old-age, surviving relatives' and disablement benefits

374. Under article 111, paragraph 1 Cst, the Confederation "shall take measures for an adequate social security for the elderly, survivors, and disabled persons". The system takes the form of three "security pillars", namely, the Federal old-age, surviving relatives' and disablement insurance (AVS/AI), employee insurance (pension funds), and individual savings.

Federal old-age, surviving relatives' and disablement insurance (AVS/AI, first pillar)

375. Article 12, paragraph 2(b) Cst provides that pensions under this heading must cover basic living expenses in an appropriate manner. Where the Federal old-age, survivors' and disablement insurance does not cover basic living expenses, the Confederation shall grant the Cantons subsidies for the financing of supplementary benefits (art. 196, section 10 Cst). The following Federal Acts are applicable:

- The Federal Act on old-age and surviving relatives' insurance (LAVS).[132] This Act has been reviewed ten times since its entry into force in 1948. The last (10th) review came into force in 1997 and marked a decisive step towards gender equality. The eleventh review is now in progress. Its goal is twofold: to consolidate the financial basis of the old-age pensions system and to introduce a new flexible retirement mechanism.
- The Federal Act on disablement insurance (LAI),[133] which came into force in 1960. The fourth review is in progress.
- The Federal Act on supplementary old-age, survivors and disablement pensions.[134] It came into force in 1966 and has been reviewed three times since.

[132] Federal Act of 20 December 1946 on old-age and surviving relatives' insurance (LAVS), RS 831.10.

[133] Federal Act of 19 June 1959 on disability insurance (LAI), RS 831.20.

[134] Federal Act of 19 March 1965 on supplementary old-age, surviving relatives' and disability pensions (LPC), RS 831.30.

376. In principle, all persons domiciled or exercising a gainful activity in Switzerland, whatever their gender, age or nationality, are obliged to take out compulsory AVS/AI insurance (art. 1, para.1 LAVS). Those not compulsorily insured include, in particular, persons affiliated to an official foreign old-age insurance scheme if taking out Swiss AVS insurance as well would represent an excessive financial burden. Persons not domiciled in Switzerland or exercising a gainful activity there for a relatively short time are also exempt from the insurance obligation (art. 1, para. 2(b) and (c) LAVS).

377. *Benefits* under the AVS include old-age pensions, surviving relatives' pensions, disablement allowances, and special aids (equipment).

378. The tenth review of the AVS introduced some important innovations as regards *old-age pensions*. The system of pensions for married couples was abolished and replaced by a system of individual pensions irrespective of civil status. Until the tenth review the AVS had been based on a traditional view of the family, with the man acting as its head and usually the financial provider and the woman taking care of the household and children. Women were entitled to a pension only if they were single, divorced or widowed or if their spouse was not yet entitled to a pension of his own. As soon as the husband was so entitled, the wife's right lapsed and the husband became entitled to a married couple's pension.

379. Since 1997, all insured persons have an individual right to the old-age pension provided by law on condition of having paid at least one year's contributions. The amount of the pension depends on the contributory period and the "determining income". For married couples, revenues received during marriage are added together and then halved, one half being credited to each spouse ("splitting"). However, the total of the spouses' two individual pensions may not exceed 150% of the maximum old-age pension.

380. The tenth AVS review includes a further improvement, namely, the introduction of *bonuses for upbringing and care*, which are incorporated in the "determining income" for purposes of calculating the pension. Insured persons can claim an "upbringing bonus" for the years in which they have exercised parental authority over one or several children of less than 16 years of age. They can claim a "care" bonus for the years during which they took care of relatives in the ascending or descending line or of disabled brothers or sisters living in the same household. This provision confirms the State's recognition of the work of upbringing and care. At present such work is performed principally by women. Thus the tenth review makes an essential contribution not only to formal but also to material equality between women and men, enabling persons who have withdrawn from paid activity in order to bring up their children or care for a relative to accumulate an acceptable old-age, survivor's and disablement pension of their own.

381. The tenth review also raised the retirement age for women from 62 to 63 years in 2001 and to 64 years from 2005. The lawmakers decided against setting it at 65 years, as for men, taking the view that women are still being discriminated against in other areas, especially at work. The matter was left pending until the next review, which will be principally concerned with the introduction of a flexible retirement model for all.

382. Lastly, the tenth review introduced, in several stages, the possibility of receiving an old-age pension before the statutory age. The rate of reductions applied

to pensions in the event of early retirement is more favourable to women than to men, and will remain so until 2009.

383. As regards the *surviving relative's pension*, the tenth review of the AVS introduced a *widower's pension*. Widowers (and no longer only widows) are henceforth entitled to a pension if they have one or several children under age at the time of the spouse's death. Widows without children are, in addition, entitled to a pension if they are aged over 45 years and were married for at least five years.[135] The right to a widower's or widow's pension lapses upon the beneficiary's remarriage or death; the right to the widower's pension lapses when the youngest child reaches the age of 18 years. A child whose father or mother has died is entitled to an orphan's pension. If both parents have died, the child receives two orphan's pensions.

384. The *disablement allowance* is paid to beneficiaries of an old-age pension or of supplementary benefits, domiciled and habitually resident in Switzerland, suffering from severe or moderate disablement, i.e. in permanent need of the assistance of others or of personal surveillance in accomplishing the ordinary acts of life. In addition, beneficiaries of pensions who require costly apparatus for purposes of locomotion, of maintaining contact with people around them or of leading an independent life are entitled to *special aids (equipment)*.

385. *Benefits* under the disablement insurance (AI) are paid to persons who, for reasons of ill-health, are totally or partially incapable of exercising a gainful activity and whose incapacity is expected to be permanent or of long duration. The benefits include rehabilitation measures, disablement pensions and disabled persons' allowances.

386. The principal goal of the AI is the insured person's re-adaptation or re-insertion in working life. That is why *rehabilitation measures* come first. They include medical measures, employment rehabilitation measures (vocational guidance, basic vocational training, reclassification, placing, assistance in the form of capital), and special schooling for disabled insured persons aged less than 20 years. Insured persons are also entitled to special aids. Some rehabilitation measures are not oriented towards gainful employment but are intended to enable the insured person to carry out household duties.

387. The *disablement pension* is paid only if rehabilitation measures fail to achieve the desired purpose in whole or in part or appear bound to fail from the outset. In order to claim a disablement pension a person must be at least 40% disabled. The amount of the pension depends on the degree of disablement (40 to 50% disabled, a quarter of the full pension; 50 to 66.66% disabled, half the full pension; more than 66.66% disabled, full pension). In principle, a married person entitled to a

[135] In the practice of the Human Rights Committee, unequal treatment of widowers and widows in the recognition of their right to a pension is founded exclusively on gender and contravenes the provisions of article 26 of the International Covenant on Civil and Political Rights in that it reflects a stereotyped concept of the roles of men and women; cf. Vos v/Netherlands, 26 July 1999, Communication 786/1997; Pauger (II) v/Austria, 25 March 1999, Communication 716/1996; Cornelis Hoofdman v/Netherlands, 3 November 1990, Communication 602/1994. The same argument applies to other areas of law; in connection with unemployment insurance, cf. two cases involving the Netherlands (W.M.Broeks, 9 April 1987, Comm. 172/1984; Zwaan-de Vries, 9 April 1987, Comm. 182/1984). However, Switzerland is not directly concerned as it has lodged a reservation to article 26 of the Covenant.

disablement pension can, if he/she was exercising a gainful activity immediately before becoming unable to work, claim a supplementary pension for his/her spouse, provided the latter is not entitled to an old-age or disablement pension of his/her own.

388. The degree of disablement is calculated according to the effect of the disablement on the person's income. The income he/she would have earned in the absence of disablement is calculated first and is then compared with the income that he/she can be expected to earn after rehabilitation. The difference represents the loss of earnings due to disablement. Disablement of persons not exercising a paid activity (persons working in the home, students of either sex) is evaluated depending on the difficulties caused in the performance of habitual tasks. Disablement pensions are calculated on the same basis as AVS pensions.

389. Insured persons habitually domiciled and resident in Switzerland and suffering from slight, moderate or severe disablement are entitled to a *disabled person's allowance*. Persons are considered disabled if, by reason of their disablement, they permanently require assistance from others or personal surveillance in accomplishing the acts of ordinary life.

390. Lastly, the Confederation awards subsidies to cantons granting *supplementary benefits* to needy persons in receipt of AVS/AI pensions.

391. The disablement hazard has tended to grow in the last few years for both men and women in all age groups. Between 1992 and 1998 the number of beneficiaries rose by 3.7% each year. Men account for 58% of beneficiaries of AI pensions. The probability of benefiting from an AI pension is one-third higher for men than for women. Women form a smaller part of the working population and, for the most part, exercise activities that are statistically less dangerous to health. AI statistics show that fewer women than men benefited from rehabilitation measures in 1999.

392. The situation of men and women in terms of disablement insurance was investigated under National Research Programme No. 35 "Women, the law and society". It was found that, despite the principle of attribution of equal value to paid and unpaid work set forth in the LAI, some inequalities subsist in practice, women in the home often being penalized by the method of calculating pensions.[136] Other gender-specific aspects of disability insurance have received relatively little attention from researchers.

Employee old-age, survivors' and disablement insurance (second pillar)

393. The employee pension plan supplements the social old-age, survivors' and disablement insurance system described in the foregoing paragraphs. Together, they are expected to ensure the appropriate maintenance of the previous lifestyle (art. 113, para. 2 (a) Cst). Benefits under the second pillar are governed by the

[136] Baumann Katerina, Lauterburg Margareta, Rollenfixierung in der Invalidenversicherung, unpublished study, 1998; see summary published in French under the title Codification des rôles dans l'assurance- invalidité in Bulletin 3 of National Research Programme No. 35, August 1997. The study has been updated and published as: Katerina Baumann / Margareta Lauterburg, Knappes Geld – ungleich verteilt: Gleichstellungsdefizite in der Invalidenversicherung, Basel etc., 2001.

Federal Act on employee old-age, survivors' and disability insurance (LPP), in force since 1985.[137] Its review is coordinated with the eleventh review of the AVS.

394. The Act defines the minimum requirements in respect of *compulsory employee insurance*. It thus leaves each insurance plan free to propose more extensive benefits. Employee insurance "supplements" the first pillar and starts only at a certain level of earnings, it being deemed that, below that level, the purpose is already met by the first pillar. That is why a threshold is set for access to compulsory employee insurance. The threshold does not take into account whether the person concerned works full-time or part-time; it is the same for everyone. The fact that more women than men work part-time and receive lower wages gives grounds to think that women constitute the majority of persons excluded from the second pillar by the criteria in use.

395. Employee insurance *benefits* are old-age, survivors' and disablement pensions. Under the law, women qualify for an old-age pension at age 62 and men at age 65. Since 1 January 2001, women who work until they qualify for the AVS pension continue to be insured under the employee insurance scheme if they meet the general conditions set out above. Since employee insurance is funded by the capitalization method, the difference between women's and men's retirement ages means that women contribute for a shorter period and must therefore contribute more in order to receive the same pension as men. This problem will be resolved if, as is envisaged, the retirement age becomes the same for both sexes following the first review of the LPP.

396. Employee insurance does not at present include a widower's pension. It does include a widow's pension, to which women aged over 45 at the time of their husband's death who have been married for at least five years, or who have dependent children, are entitled (see widow's pension under the AVS, para. 383). Widows who fail to meet one of these conditions are entitled to a single allowance corresponding to three years of pension. In this matter, too, gender equality is to be introduced as a result of the first review.

397. Lastly, employee insurance pays benefits to persons who are at least 50% disabled provided that they were insured at the time of disablement. Beneficiaries of a disablement pension are also entitled to a supplementary pension for any children that would qualify for an orphan's pension in the event of their death.

398. From 1 January 2001, separation benefits (rights acquired by the insured person when he/she ceases to belong to the insurance plan) acquired during marriage are shared between the spouses, in principle in equal parts, in the event of divorce.

Individual insurance (third pillar)

399. The Confederation and the cantons encourage this form of insurance, which can be adjusted to individual needs, particularly by fiscal measures and by policies encouraging ownership (art. 111, para. 4 Cst). Individual insurance supplements the first two pillars. A distinction should be drawn between "tied" and "free" individual insurance (3rd pillar (a) and (b), respectively). 3rd pillar (a) includes recognized forms of insurance, which are treated like employee insurance for tax relief

[137] Federal Act of 25 June 1982 on employee old-age, survivors' and disability insurance (LPP), RS 831.40.

purposes. In particular, it allows wage earners who are excluded from employee insurance, as well as self-employed workers, to make their own insurance arrangements. 3rd pillar (b) consists essentially of individual savings and life insurance. It also enjoys a limited amount of tax relief.

Health and accident insurance

400. The health insurance system has undergone a thorough review leading to the adoption of the Health Insurance Act (LAMal), which entered into force in 1996.[138] The Act makes *health care insurance* compulsory for all persons domiciled in Switzerland. *Daily allowances* (compensation for loss of earnings in case of sickness) are also regulated by the LAMal, but they remain optional.

401. *Compulsory health care insurance* allocates benefits in the event of sickness, childbirth and accident (unless the latter is covered by a special accident insurance scheme). Health care insurance covers medical and pharmaceutical costs, certain tests and preventive measures for especially vulnerable categories of insured persons, benefits for congenital infirmities not covered by the AI, special maternity benefits and a certain amount of dental care. The period of cover is unlimited.

402. The LAMal has improved the situation of women in several respects. It makes health insurance compulsory for everyone and stipulates that health insurance must cover pregnancy and maternity costs (including, in particular, seven medical examinations in the case of a normal pregnancy and as many consultations as necessary in cases where the pregnancy is at risk). Health insurance also contributes towards the cost of childbirth preparation classes and advice on breast-feeding.[139] While insured persons must participate financially in the cost of medical care in the event of sickness, specific maternity benefits do not require any financial participation on the beneficiary's part.

403. Lastly, the LAMal provides that insurance premiums must be equal for all persons insured by the same insurance company in the same region. Premiums in the same region differ from one insurance company to another, but insured persons are entitled to choose their health insurance company and to change it freely; they thus have a possibility of influencing their insurance premium. But individual premiums and their relatively high level are disadvantageous to people with smaller incomes and, consequently, to women. The Act offers a correction in the form of a system of individual premium reductions for persons in modest economic circumstances, financed by subsidies from the Confederation and the cantons. The premium reduction system is currently being examined with a view to establishing whether or not it is fulfilling its purpose.

404. For costs outside the scope of compulsory insurance (e.g. those of a private room in a public or private hospital) there exists the possibility of *supplementary health insurance*. This is not governed by the Health Insurance Act but by the Insurance Contracts Act,[140] i.e. it is a matter of private law. Although the law does not, strictly speaking, insist on gender equality in this case, insurance companies can choose not to make their premiums gender-differentiated, and some companies are

[138] Federal Act of 18 March 1994 on health insurance (LAMal), RS 832.10.

[139] Art. 13 ff of DFI ordinance of 29 September 1995 on compulsory health care insurance benefits in case of sickness (health care insurance ordinance, OPAS), RS 832.112.31.

[140] Federal Act of 2 April 1908 on insurance contracts, RS 221.229.

already doing so. In 1999 the National Council adopted a parliamentary initiative calling for a rider to the Insurance Contracts Act prohibiting gender-differentiated treatment in supplementary health insurance contracts. This initiative has not yet been considered by the Council of States.

405. The LAMal also governs *optional daily benefits insurance*, which provides the possibility of having the risk of loss of earnings due to sickness or maternity covered by social insurance. All persons above 15 and below 65 years of age domiciled or exercising a gainful activity in Switzerland can conclude an insurance contract for daily benefits. The amount of the daily benefit is agreed between the insurance company and the insured person. Sickness benefits are paid for at least 720 days over a period of 900 consecutive days. Daily maternity benefits are payable if, at the time of giving birth, the mother had been insured for at least 270 days without more than three months' interruption. Benefits are paid for 16 weeks, of which at least 8 after confinement. The 16 weeks are peremptory and cannot be imputed to the period of 720 days.

406. *Accident insurance* is subject to the Accident Insurance Act (LAA), in force since 1944.[141] It is compulsory for all paid workers in Switzerland, whatever the form of work (work from home, apprenticeship, traineeship, work for a voluntary association, professional/vocational schools, sheltered workshops). Benefits are paid in the event of accident at work ("occupational accident"), "non-occupational accident" and occupational disease. Accidents on the way to or from work count as "non-occupational".

407. Persons who work less than 8 hours a week (12 hours prior to 1999) are not insured against non-occupational accidents. This affects women more than men because there are many more women in that category. But the consequences are not too serious, for two reasons: (a) accidents to such persons on the way to or from work are treated as occupational accidents, and (b) compulsory health insurance also covers medical care costs arising from an accident if these are not covered by an accident insurance.

408. Accident insurance benefits include payments for medical care, reimbursement of costs, daily payments, disablement pensions, disabled persons' allowances and allowances for diminished corporal integrity. Cash benefits are calculated on the basis of assured earnings.

409. Under certain circumstances, accident insurance also provides a pension to the surviving spouse and children of a deceased insured person. In this case, too, widows have supplementary rights.

Unemployment insurance

410. Three different institutions guarantee the social security of unemployed persons in Switzerland. The main one is the unemployment insurance system of the Confederation, followed by cantonal assistance (in 19 cantons) and communal social assistance, which is regulated by the cantons. Social security of unemployed persons who cannot or can no longer claim benefits under the Federal scheme is generally guaranteed by cantonal laws on assistance to the unemployed (this is the case in 19 cantons). Elsewhere, unemployed persons who cannot or can no longer claim

[141] Federal Act of 20 March 1981 on accident insurance (LAA), RS 832.20.

Federal benefits receive support in the form of social assistance provided by the canton or commune. Cantonal and communal benefits (reimbursable in some cantons) are granted only upon proof of indigence, which has to meet strict criteria.

411. The Federal Unemployment Insurance Act[142] guarantees the insured person, whether employed full-time or part-time, "suitable compensation for loss of earnings". Such compensation can take several forms: unemployment benefit, compensation in the event of a cut in the number of working hours, compensation in the event of short-working due to adverse weather conditions, and compensation in the event of the employer's insolvency. Unemployment benefit is paid to insured persons who are wholly or partially unemployed. Persons of working age not engaged in a work relationship and seeking to work full-time are considered unemployed. Persons of working age not engaged in a work relationship and seeking part-time employment, as well as persons in part-time employment seeking full-time employment, are considered partially unemployed. The right to unemployment benefits depends, in particular, on the insured person's "placeability", a condition women with family obligations often find difficult to meet. Unemployed persons are considered "placeable" if they are willing to accept suitable work and are able and legally entitled to do so.

412. Since 1996, unemployment insurance has been aimed at preventing potential and existing unemployment by measures focused on the labour market. A provision designed to promote women's integration or reintegration in the labour market was added to the Act following its partial review in 1996. Insured persons who, for at least 6 months, have devoted themselves to the upbringing of children under 16 and who, for that reason, have failed to exercise an activity subject to compulsory contributions so as to attain the minimum contributory period, can, once in their lifetime, count that period of upbringing as a contributory period for purposes of benefiting from unemployment insurance. This provision is only applicable, however, if the insured person is obliged by economic necessity to return to paid employment. Under the stabilization measures the Confederation has had to adopt owing to its difficult financial situation, the maximum number of days for which insured persons who have devoted themselves to the upbringing of their children are entitled to receive benefits has been halved. Moreover, following the Act's adjustment due to the entry into force of the bilateral agreement with the European Union on free circulation of persons, the upbringing period will be taken into consideration only if it exceeded 18 months.[143]

413. Under the duty-sharing arrangements between the Confederation and the cantons, the latter are responsible for implementing the Federal Unemployment Insurance Act. The Federal Council recommends that the cantons associate their employment projects with educational programmes, an approach that should be particularly advantageous to unemployed women. The cantons have also been invited to pay greater attention to women's special requirements (e.g. as regards part-time work) and to make their placement services aware of the special difficulties encountered by unemployed women. Some of the measures taken in the field of unemployment insurance are being investigated under various research

[142] Federal Act of 25 June 1982 on compulsory unemployment insurance and compensation in the event of insolvency (Unemployment Insurance Act, LACI), RS 837.0.

[143] See also Béatrice Despland, Responsabilités familiales et assurance-chômage – une contradiction ?, Basel etc., 2001.

programmes as to their effectiveness in assisting both women's and men's return to employment.

414. Some cantons have adopted special measures on behalf of unemployed women or are providing special child-care facilities for unemployed mothers looking for a job or taking a training course. A small number of cantons (in particular Jura, Neuchâtel and St.Gall) have adopted special employment programmes for women. Some cantons have adopted measures of assistance to women who have gone back to work or intend to do so, including, for example, adult education projects (Obwald), retraining courses (Aargau) or courses specially designed for women wishing to return to employment (Appenzell Outer Rhodes, Jura, Schaffhausen).

Paid leave and incapacity to work (art. 11, para. 1(e) of the Convention)

415. In the case of labour relations governed by private law, article 329a CO provides for at least four weeks of paid leave in each year of service. Workers (of both sexes) and apprentices below 20 years of age are entitled to a fifth week of paid leave. A standard work contract or collective agreement may depart from these conditions only if the conditions it offers are more advantageous. The average period of annual paid leave specified in collective agreements concluded in 1992 was 22.6 days.

416. The employer determines the date on which paid leave shall be taken, but in doing so takes the wishes of the personnel into account. Paid leave is generally granted during the year of service for which it is due and must include at least two consecutive weeks. While the work relationship continues, paid leave cannot be substituted by cash payments or other benefits.

417. Article 324a CO requires the employer to *continue paying the wage for a limited period* if the worker is prevented from working, through no fault of his own, for reasons inherent in his/her person (in particular, sickness or accident). This provision applies to work relationships that have lasted for more than three months or were concluded for more than three months. The obligation to continue paying the wage applies, in principle, for at least three weeks during the first year of service and for an equitably established longer period thereafter, the duration of the work relationship and any special circumstances being duly taken into account. The law provides a possibility to conclude a contractual agreement that derogates from the above obligation (art. 324a, para. 4, CO); this generally consists in taking out insurance for loss of earnings in the event of sickness (and, in many cases, of maternity as well). The same provision states that benefits accruing to the worker under such insurance must be at least equivalent to those due under the legal obligation to continue paying the wage. Payment of 80% of the wage during 720 days over a period of 900 days is at present considered an equitable benefit. Such terms are current today.[144] Without agreement to the contrary, insured persons are entitled to receive payments from the third day of sickness. Insurers can insert reservation clauses in the contract to exclude existing sickness risks (acute diseases or risk of relapse) for a maximum of five years. In that case, the employer is not exempt from the obligation to continue paying the wage.

[144] The Health Insurance Act regulates the principle of "optional daily payments insurance", cf. arts. 67 ff of the Federal Act of 18 March 1994 on health insurance (LAMal), RS 832.10.

418. Workers (of both sexes) are, moreover, entitled to the usual hours or days of leave for personal or family reasons (art. 329 CO). However, the obligation to pay the wage exists only within the limits of article 342a CO. Any solutions more advantageous to women workers that may be included in the relevant collective agreement or individual work contract, or that may correspond to traditional usage in the enterprise or sector concerned, are reserved. Employees of the Confederation can obtain special paid leave depending on the reasons advanced.

419. Regarding *care of sick children*, article 36, para. 3 of the Labour Act provides as follows: "The employer must, upon presentation of a medical certificate, grant leave to workers with family responsibilities for the period necessary to take care of a sick child. This period may not exceed three days." There is, however, no general right to parental leave.

G. Protection of health and safety of working conditions (art. 11, para. 1(f) of the Convention)

420. Swiss law distinguishes between questions relating to the protection of workers' health and those relating to the prevention of accidents and occupational diseases.

421. Article 6 of the Labour Act stipulates that, in order to *protect the workers' health*, the employer shall take all measures the need for which has been demonstrated by experience, the application of which is made possible by the state of technology, and which are consistent with the operating conditions of the enterprise. In particular, the employer must organize his installations and working procedures in such a way as to protect the workers as far as possible against health hazards and excessive fatigue. A Federal Council ordinance sets out in detail the measures that must be taken for the protection of workers' health.[145] Under article 328 CO the employer is further obliged to take such measures as are dictated by experience, applicable at the present state of technology and adapted to the conditions of the enterprise or household, in order to protect the life, health and corporal integrity of workers.

422. Lastly, the employer must employ *pregnant women* and *nursing mothers* in such a way that their and the child's health is not endangered, and must arrange their working conditions accordingly (art. 35 of the Labour Act; on this point, see para. 430 below).

423. The Accidents Insurance Act (LAA)[146] governs accidents insurance for workers of both sexes and contains provisions concerning the *prevention of accidents and occupational diseases*. The Confederation's rules apply to all enterprises employing workers in Switzerland. They make no distinction between female and male workers. Under certain conditions, however, members of the enterprise owner's family who are employed in the enterprise can be exempted from compulsory insurance. The Federal Council can also exclude certain categories of enterprises or of workers from the sphere of application of these rules. Thus, for example, the rules do not apply to private households.

[145] Ordinance No. 3 of 18 August 1993 relating to the Labout Act (Hygiene, OLT 3), RS 822.113.
[146] Federal Act of 20 March 1981 on accidents insurance (LAA), RS 8332.2.

424. The LAA requires employers to prevent accidents and occupational diseases. To that end, they must take "all measures the need for which has been demonstrated by experience, the application of which is made possible by the state of technology, and which are consistent with the given conditions". Compliance with the accident prevention provisions is monitored by several organs, the chief of which is the Swiss National Accidents Insurance Fund (CNA).

425. Accident statistics show a steady decline in the number of accidents at work and a rising trend in the number of accidents occurring away from the workplace. The risks of an accident at work vary greatly depending on the sector of activity. Men are more exposed to such accidents than women and younger people more than older ones. Similarly, occupational diseases have diminished by 10% in proportion to the number of workers in the last few years. In 1998, the incidence rate was 9.1 per 100,000 among men and 4.1 per 100,000 among women.

H. Prohibition of dismissal on grounds of pregnancy or marriage (art. 11, para. 2 (a) of the Convention)

Contractual protection against dismissal during pregnancy and after childbirth

426. Under article 336c CO, the employer may not dissolve the work contract throughout the duration of pregnancy and for 16 weeks after confinement. Notice of dismissal given during a protected period is null and void. If notice of dismissal was given before the protected period but had not expired before that period, the period of notice is extended by the duration of the protected period. Such protection is not available, however, during a trial period, which according to article 335b CO may last for from one to three months.

Protection against dismissal under the Equality Act

427. Article 3 LEg prohibits employers in private or public law to discriminate against workers, in particular on grounds of their gender, civil status or family situation. The prohibition of discrimination applies, in particular, to dismissal. Today, the victim of a discriminatory termination of the work relationship can claim compensation amounting to as much as six months' pay (art. 5, paras. 2 and 4 LEg). The persons concerned benefit from an alleviation of the burden of proof, which means they need only show that the discriminatory act was probably based on their civil status or family situation. The provisions of the Code of Obligations relating to unlawful dismissal also apply to work relations in private law.

I. Maternity leave with pay (art. 11, para.2 (b) of the Convention)

Repeated rejection of proposals for maternity insurance

428. Although the Constitution called upon lawmakers to introduce maternity insurance as far back as 1945, no legislation to that effect has yet been enacted. Several proposals for the introduction of maternity leave with pay have been rejected by popular vote. Similarly, an amendment to the Health Insurance Act introducing a maternity allowance was rejected by vote in 1987. The latest proposal to date, whose object was to introduce 14 weeks' maternity leave for women in paid employment and a daily allowance for non-working women as part of a separate compulsory social insurance, was also rejected by popular vote in 1999.

429. After this latest rejection, a large number of parliamentary interventions relating to maternity leave with pay have been deposited. Some of them call for a review of article 324 CO with a view to guaranteeing the right to 8 to 14 weeks' pay for women in case of maternity. All these parliamentary interventions have one point in common, namely that maternity leave with pay must not suffer any proportional reduction as a result of absence from work due to sickness or accident. On 9 March 2001 the Federal Council instructed the Department of Justice and Police to submit for consultation two models of a review of the Code of Obligations (C0). Under the first model, women workers would receive the whole of their pay for at least 8 weeks after confinement (9 weeks during the 3rd year of service, 10 weeks during the 4th year, 12 during the 5th and 6th years, and 14 weeks during the 7th and succeeding years) even if they had to interrupt coming to work before the confinement. Thc second model provides for payment of the full wage for 12 weeks.

Current regulations under labour law

430. The revised Labour Act *prohibits women from working* during the 8 weeks foliowing a confinement (art. 35a, para. 3 of the Labour Act); until the 16th week after confinement women manybe employed only subject to their consent (for other provisions intended to protect pregnant women, see para. 445 below).

431. The Labour Act does not provide for any allowance during the period of prohibition to work. Under article 324a CO, employers are *obliged to continue paying the wage*, as in other cases of inability to work, if the woman worker is prevented from working owing to maternity. The obligation to continue paying the wage operates for three weeks during the first year of service and for a longer period thereafter, defined depending on the length of the work relationship and on special circumstances (art. 324a, para.1 CO; see para. 417 above). Cantonal courts have drawn up standard scales for determining the "longer period" during which the wage must continue to be paid. The Berne scale - the one most often used - provides for a month in the second year of service, two months in the second and third years, three months in the fifth to ninth year, four months from the tenth to the fifteenth year, etc. The Zurich scale provides for eight weeks in the second year with an additional week for each following year. This system, based as it is on seniority, is rather disadvantageous to women workers who are flexible and mobile, qualities much in demand, especially from younger workers, on today's labour market.

432. More generous rights can be provided in a contract, standard agreement or collective agreement. Several private employers and practically all public employers now introduce paid maternity leave provisions in their contracts. Thus, the Federal administrations grants 4 months' paid leave if the employee has completed 6 months of service at the time of the confinement (two months in all other cases). Most cantonal administrations guarantee paid maternity leave of from 8 to 16 weeks subject to certain conditions. Under the collective agreement of the hotel and restaurant industry, for example – a sector that employs a large number of women – employers must pay 80% of the wage for at least 70 days.

433. In collective labour agreements, too, the *length of the pay entitlement period* depends nearly always on seniority. It varies very widely, e.g. from 3 to 16 weeks in the first year of service and from 5 to 16 weeks in the second year. A survey

published in 1995[147] concerning 68 collective labour agreements (CLA) and 400 000 workers of both sexes (88.7 of all persons covered by CLA) showed that 5% of persons covered by CLA are entitled only to the minimum maternity benefits specified in the Code of Obligations. For 41% of women covered by CLA, loss of working time due to pregnancy or maternity is subject to the same rules as that due to sickness or accident. In consequence of this, the right to payment of wages in the event of maternity is proportionally reduced by any working time lost as a result of sickness or accident. However, 54% of women workers do enjoy a separate right to pay during pregnancy or maternity.

434. In many cases, therefore, women workers receive pay during the 8 weeks in which work is prohibited only if they have at least three years' seniority with their current employer. They receive full pay only if they have not stayed away from work during the current year for health reasons, whether or not connected with pregnancy. Otherwise the obligation to continue paying the wage is reduced proportionally. Employers may not reduce the leave of women workers who have been prevented from working by pregnancy or confinement for a maximum of two months (art. 329b, para.3 CO). From the third full month of absence due to pregnancy or confinement, employers may reduce the woman worker's leave by one-twelfth for each full month of absence.

435. Today, the Labour Act also requires employers to propose an equivalent day job to pregnant women employed on night work. The same obligation applies from the 8th to the 16th week after confinement. Where that is not possible, the woman worker is entitled to 80% of the wage she was earning previously for evening or night work.

436. Women have no direct right to keep their jobs during pregnancy and after confinement. However, since changing jobs implies a change of work contract, they do have this right indirectly during the period in which they are protected against dismissal. Thus they are legally entitled to return to their job after the 8 weeks in which working is prohibited.

Health insurance benefits in case of pregnancy

437. While medical expenses during pregnancy and confinement are covered by compulsory health insurance (see para. 400 above), the daily benefits insurance is optional (for the connection between this and the obligation to continue wage payments, see paras. 431 ff above). A woman who has taken out daily benefits insurance is entitled to such benefits in case of pregnancy and confinement provided she has been insured for at least 270 days (without an interruption of more than 3 months). Daily benefits in case of maternity are paid for 16 weeks, of which at least 8 after confinement. A woman not insured by the employer must pay a very high premium for a daily benefits insurance that will cover the actual loss of earnings.

438. Much more advantageous conditions are offered under some collective agreements. In particular, such agreements provide for the cost of daily benefits insurance being shared between employer and employee. They guarantee the woman

[147] Baumann, Bauer, Nyffeler, Spycher, Gesamtarbeitsvertraege (k)eine Maennersache, Vorschlaege zur gleichstellungsgerechten Gestaltung der Sozialpartnerschaft, Verlag Ruegger, Chur/Zurich 1995.

worker's wage during absence due to maternity for periods of 3 weeks to 4 months depending on seniority (16 weeks maximum in the public sector).

Protection of maternity in the cantons

439. Eleven cantons (Fribourg, Glarus, Grisons, Lucerne, Neuchâtel, St.Gall, Schaffhausen, Ticino, Vaud, Zug and Zurich) pay benefits to needy women in case of maternity. These benefits are granted where the beneficiary's income does not exceed a certain ceiling. They are paid for from 6 months to 3 full years depending on the canton. In some cases (e.g. Neuchâtel) the allowance for a couple is different from that for a single parent.

440. The Parliament of the canton of Geneva has adopted an Act introducing 16 weeks' maternity leave with pay corresponding to 80% of the wage for working women. This Act came into force on 1 July 2001. Other cantons are also considering the possibility of establishing a cantonal maternity insurance system or of providing other benefits in case of maternity (maternity allowance).

J. Encouragement of social services to enable parents to combine family obligations with work responsibilities (child-care facilities) (art.11, para. 2 (c) of the Convention)

Child care outside the family

441. Child care outside the family is essential if gender equality is to be attained and domestic and work responsibilities redistributed. A further advantage of this system is that it helps families to organize themselves in a changing social environment and offers children the socialization opportunities they need outside the family circle. Indeed, article 4, para. 3 of the Convention on the Rights of the Child calls upon States parties to take measures to that effect. Many parents, and especially single parents, rely on child-care facilities in order to combine their family responsibilities with their work. The creation of facilities is essentially a matter for the cantons and communes as well as for the private sector. In a report on the subject published in 1992, the Federal Commission on Women's Issues took stock of the existing situation and made certain recommendations. Today, the results of the implementation of those recommendations must be described as mixed. As a result of private and public initiatives, the previously unsatisfactory situation in many communes and regions has improved. Some cantons and communes have created a legal basis for opening and funding child-care facilities. However, the provision of all-day places for young infants remains inadequate. In March 2001 the National Council approved a parliamentary initiative asking for a programme of encouragement of child-care facilities. Over the next ten years the Confederation is to release 100 million Swiss francs to assist the launching of local projects. The growing demand for (female) manpower in the Swiss economy has helped considerably to advance public debate on the subject of child-care outside the family. Employers' circles, in particular, are becoming increasingly aware of the economic importance of this issue.

442. While many cantons leave the opening of new child-care facilities to the communes and to private institutions, confining themselves to giving financial support to those already in existence, the canton of Fribourg has adopted an Act making it compulsory for communes to provide child-care facilities in sufficient

quantity. Two years after the Act's entry into force, the results vary from one part of the canton to another. The respective shares of the communes and of parents in covering the costs are not clearly defined in the Act. Parents living in towns and suburbs, where the offer is larger and more varied, spend between 9 and 15% of their gross income on child care, whereas in country areas, where there are some child minders but only very few nurseries, with prices varying on a wide scale, the cost of full-time care for one child can reach 20% of the gross wage. A very recent law in the canton of Valais makes it obligatory for communes to set up and finance child-care facilities in sufficient number for children from birth to the end of primary schooling (12 years). The canton, for its part, undertakes to cover 30% of the costs. Elsewhere, the canton of Neuchâtel has adopted by popular vote an Act on baby-care facilities making it obligatory for the communes to assess their needs for nurseries and to make available a supply of high-quality places to meet those needs. The canton's financial participation amounts to 20%.

443. The model used in the canton of Ticino is of interest in this context. The number of day-care places is greater than in other parts of Switzerland. The canton has a system of non-compulsory infant schools (*scuola d'infanzia)* open to children aged from 3 to 6 years; these are attended by 52% of the canton's three-year olds and 99% of six-year olds. Ticino's child-care network includes nurseries, kindergartens, schools operating on a continuous schedule and others operating on a shift system, lunchtime canteens and supervised homework classes. However, child-care opportunities for very young infants (children below infant-school age) remain inadequate. The canton is currently reviewing its facilities with a view to adapting them to present-day needs. A report published in 1998 proposes still other measures aimed at helping parents to combine paid work with having a family.

444. Some departments and offices of the Federal administration offer child-care facilities to their staff. In addition, all members of the Confederation's general administration can consult the general register of child-care facilities kept by the Federal Office of Personnel since 1998. In its capacity as employer, the Confederation covers part of the child-care costs incurred by parents while working for the Confederation anywhere in Switzerland. It also participates in funding the system of nursery places and child-minders operating in the Berne city area. Lastly, it provides financial aid for the opening of new nurseries attached to its departments and offices.

K. Labour law protection of pregnant women (art. 11, para. 2 (d) of the Convention)

445. The Labour Act contains special provisions for the protection of pregnant women and nursing mothers. Their working conditions must be arranged in such a way that their and the child's health is not endangered (art. 35, para. 1). The Federal Council can, by ordinance, prohibit on health grounds the employment of pregnant women and nursing mothers for difficult or dangerous duties, or attach special conditions to such employment (art. 35, para. 2). An ordinance of the Federal Economic Department[148] defines the criteria for classifying work as difficult and dangerous and lists the substances, microorganisms and activities that represent

[148] Federal Economic Department (DFE) ordinance of 20 March 2001 on dangerous or difficult activities in case of pregnancy or maternity, RS 822.111.52.

serious hazards to maternal and infant health. Pregnant women and nursing mothers are entitled to 80% of their wage if they cannot be employed for certain duties.

446. Pregnant women may, upon simple notice, stop coming to work or leave their job altogether. During the 8 weeks preceding confinement they cannot be employed between 8 p.m. and 6 a.m. (evening and night work). If, in the months following confinement, a woman has not recovered her full working capacity, she cannot be assigned to duties that exceed her strength. Nursing mothers have to be allowed the time needed for breast-feeding (art. 35a, paras. 3 and 4; art. 35b).

L. Development cooperation

447. In the industrial, small- and medium-sized enterprises and vocational training sectors of its development cooperation, Switzerland endeavours to ensure that women's specific characteristics (level of education, family responsibilities, social context) are taken into consideration so that the employment opportunities offered to women approximate as far as possible those offered to men. New projects are called upon to treat women and girls as a separate target group. At least half the courses offered under new vocational training projects are specifically addressed to women. Education directors are made aware of the need to adapt syllabuses to women's needs and to facilitate women's access to training. Some vocational training projects include a "Tracer Records" system to ascertain whether the training offered to women is adequate and enables them to find employment. Other projects (in Ecuador and Sri Lanka), addressed to women at the head of small- and medium-sized enterprises, are designed to provide help in the efficient running of the enterprise. Regular efforts are also made to make employers aware of the advantages of employing women.

448. The Directorate for Development and Cooperation (DDC) has prepared a guide on gender perspectives in the encouragement of crafts and industries. Several events on the topic of women at work were organized at the special session of the General Assembly on the World Social Summit + 5. In 2001, DDC will take stock of its experience and will carry out an evaluation, the results of which will be made available in the form of "best practices".

449. In its programmes and projects, DDC also seeks to advance women in the unofficial work sector and the subsistence agriculture economy. It supports women in those areas and is committed to taking their needs and objectives into account.

Article 12 of the Convention – Elimination of discrimination in the field of health

450. General information on Switzerland's health system can be found in the initial report of Switzerland concerning the implementation of the International Covenant on Economic, Social and Cultural Rights (paras. 516 ff).[149]

[149] Doc. E/1990/5/Add.33.

A. A health system influenced by federalism

451. Swiss health policy is strongly influenced by the federalist character of the State. The cantons have important powers, the power to organize the health service being the foremost among them. The Confederation has major responsibilities in areas such as drugs, control of epidemics and transmissible diseases, foodstuffs, university-level examinations for admission to medical professions, protection against radiation, and health insurance.

452. The most important feature of this federal system is the absence of a supreme authority over the health system. At the national level, the Confederation's duties are performed by several offices, most of which come under the Federal Department of the Interior. At the cantonal level, too, there are one or several departments in charge of health matters. Coordination between the cantons is ensured by a body set up by them for that purpose, the Swiss Conference of Cantonal Directors of Health (CDS). A foundation – the Swiss Foundation for Health Promotion – has been established to coordinate the activities of all partners active in that field (Confederation, cantons and private institutions).

453. A survey of cantonal structures and strategies in the field of women's health was conducted in 1998. It revealed that almost half the cantons (43.5%) do not, as yet, refer to women as a specific target group in their health policy measures, decisions and recommendations. The cantons that do so place the emphasis on the prevention of drug addiction and AIDS, sexuality and pregnancy, general disease prevention and health promotion. Only a little over a third of the cantons (36%) have services or health officers specifically concerned with women's health; these include two cantonal health promotion services, a public health board, a cantonal youth, family and disease prevention service, and an equality bureau, plus a number of AIDS prevention services, advice centres for drug addicts, family planning services, marriage and family counselling centres, a women's shelter and a league against cancer.[150]

454. Besides the Confederation and the cantons, there exist numerous organizations, associations and institutions doing specific work in the field of women's health.

455. To date, measures addressed specifically to women have been developed at the national level only in connection with AIDS and drug addiction. However, after the Fourth World Conference on Women (Beijing 1995), the need for more sustained efforts in the field of women's health became clearly apparent. The Federal Office of Public Health therefore instructed the Institute of Social and Preventive Medicine of Basel University to prepare an outline for the promotion of women's health. The outline is divided into the following six sections:

- Sexual and reproductive health;
- Health promotion, disease prevention and lifestyles;
- Quality of services offered;

[150] Institute of preventive and social medicine (*Institut fuer Sozial- und Praeventivmedizin*), Basel University: Konzeptionelle Arbeiten zur Foerderung der Gesundheit von Frauen, Basel 1999.

- Priority for elderly women;
- Priority for socially disadvantaged women;
- Research.

456. The Basel institute's outline proposes the establishment of a ***national service for women's health*** within the Federal Office of Public Health. The setting up of this service is in progress.

B. Women's access to health care services

National coverage of health services

457. Switzerland has a large number of hospitals, private nursing homes and medical surgeries. The number of practising physicians has risen by 99% over the past twenty years; nearly half of all Swiss doctors work in private medicine. Thanks to the high density of physicians and hospital establishments, the smallness of Swiss territory and the quality of public and individual transport networks, the population's access to medical care is good (for both men and women). The 1997 health survey revealed, however, that although persons in the less privileged social categories are generally in poorer health than those in more privileged ones, the relative proportions of persons who consult doctors and frequent medical establishments are similar in both cases. Moreover, the proportion of persons in the less privileged categories who consult a dentist is strikingly smaller, dental costs in Switzerland being paid by the patient.[151]

Access to health services specially intended for women

Health care in the fields of sexuality and reproduction

Family planning

458. In the field of *family planning*, Federal law[152] requires the cantons to set up services offering extensive advice on the subject of pregnancy. Interested persons are entitled to free assistance and advice. The family planning and pregnancy centres inform them of private and public establishments that can be of help if they wish to proceed with the pregnancy, explain the consequence of an abortion, and provide information on contraception.

459. Means of contraception are easily obtainable in Switzerland, where their use is widespread in comparison with other countries. Women aged between 15 and 30 tend to use the pill (43%), with condoms in second place (32%). Women in the 35-49 age bracket resort to ligature of the Fallopian tubes (28%) and IUDs (9%) far more than younger women but make less use of the pill (14%) and condoms (15%). The use of contraceptives by younger women is closely related to their educational level. Only 56% of 15-year old girl apprentices who have sexual relationships use a

[151] Federal Statistical Office, Santé et comportement vis-à-vis de la santé in Suisse 1997, Neuchâtel 2000.

[152] Federal Act of 9 October 1981 on pregnancy advice centres, RS 857.5.

means of contraception, as against 100% of girls of the same age attending school.[153]

460. Women today are having babies later in life than their mothers and grandmothers. 14% of women born between 1945 and 1949 had their first child before the age of 20, but for the generation born between 1970 and 1974 the figure has fallen to 3%. The average age for women having their first baby today is 28.

461. Health advice on sexual matters is provided by doctors, but can also be obtained from cantonal family planning and AIDS control centres. Schools generally give sex education classes. It is true that the contents and quality of these classes vary from one canton to another, but a large majority of young people can be said to be receiving some information on sexuality.

462. In the last few years it has become evident that information on sexual and reproductive health must also be addressed to foreign women. These women are strongly represented in the category of women of childbearing age; in 1995, they accounted for 22% of 15 to 44-year olds. The Swiss Association for Family Planning and Sex Education (*Schweizerische Vereinigung fuer Familienplanung und Sexualerziehung, SVFS),* in collaboration with the Federal Office of Public Health, has therefore published a booklet in several languages dealing with women's sexual and reproductive health. The purpose of the booklet is to facilitate foreign women's access to institutions active in that field, to create a link between the prevention of sexually transmissible diseases, particularly AIDS, and sex education and to reduce the number of unwanted pregnancies (and consequently of abortions).

Abortion

463. The criminal law provisions in force concerning *abortion* date back to 1942. Interruption of pregnancy is permitted only if the pregnant woman's life is in danger or if continuing the pregnancy would severely and permanently threaten her health ("medical grounds"). Since the 1970s there have been several efforts to liberalize the interruption of pregnancy, all without success. However, the medical grounds concept is being interpreted in an increasingly liberal manner. Today, the positive medical opinion required for an abortion is rarely refused. Parallel with this, the number of interruptions of pregnancy carried out in Switzerland has greatly diminished thanks to modern means of contraception (from 17,000 in 1966 to 12,500 in 1997). Health insurance companies cover the costs of the medical opinion and of the abortion itself. The number of illegal abortions is not known, but it is probable that this too has declined considerably.

464. Following a parliamentary initiative submitted in 1993 proposing the decriminalization of abortions in the early months of pregnancy ("time-limit solution"), Parliament adopted a new set of regulations on 23 March 2001. In broad outline, interruption of pregnancy remains punishable in principle but is henceforth permitted subject to the following conditions: during the first twelve weeks of pregnancy, the pregnant woman claiming to be in a situation of distress can request, in writing, an interruption of pregnancy from a doctor duly empowered to exercise

[153] Swiss National Fund for Scientific Resarch, Des données pour agir, Rapport sur la santé des femmes en Suisse, Berne 1996.

his profession. The doctor must personally conduct an in-depth interview with the woman concerned, advise her and hand her a file containing full information on advice centres, adoption possibilities and organizations or associations able to furnish moral or material assistance. There are also certain administrative rules, e.g. that the cantons must designate those surgeries and hospitals at which pregnancy interruptions can be carried out. The doctor who carries out the abortion must, for statistical purposes, inform the competent authority. These new Penal Code provisions are subject to an optional referendum. Their entry into force will therefore depend on the outcome of a popular vote.

465. The people and the cantons will also be called upon to vote on a Confederation-wide popular initiative entitled "For mother and child – protection of the unborn child and assistance to the mother in distress", proposing that abortion be constitutionally prohibited.

466. Overall, 8 per thousand of women aged 15 to 44 living in Switzerland undertake an interruption of pregnancy each year. According to estimates, about 3 times as many foreign women (18 per thousand) resort to abortion as Swiss women (5.3 per thousand).[154]

467. The RU 486-Mifegyne abortive pill was legally placed on the market in Switzerland in July 1999. In a ruling of 20 January 2000, the Federal Supreme Court decided not to consider an appeal against the abortive pill's authorization lodged by anti-abortion associations. The abortive pill may be issued only subject to clearly defined conditions and only by clinics and treatment centres that carry out abortions and have an emergency service.

Unwanted pregnancies

468. Data on *unwanted pregnancies* are available only in respect of the youngest women. Among sexually active young women aged 15-19, 3% to 8% become pregnant against their wish. Eighty per cent of these early pregnancies are interrupted.

Pregnancy and maternity

469. The maternal mortality rate in Switzerland is very low (between 1 and 8 deaths per 100,000 live births). The stillbirths and infant mortality rates (3-4 and 5-6 per thousand, respectively) are also very low by international standards.

470. The number of medical consultations during pregnancy is fairly small, averaging 4.1 for each pregnancy. Young women tend to see their doctor a little more often than older ones (for payment of costs under the compulsory health insurance scheme, see para. 402 above).

Breast-feeding

471. Ninety-two per cent of mothers start to breast-feed after the confinement. Three-quarters of these are still breast-feeding by the end of three months (of which 62% exclusively). After six months, 41% of mothers continue to breast-feed,

[154] See preceding footnote.

including 11% exclusively. Interest in breast-feeding has grown in recent years and mothers are receiving better preparation, with the result that the number of nursing mothers has increased greatly.

472. A working group of the Swiss UNICEF Committee has been endeavouring to promote breast-feeding in Switzerland since 1993. A foundation established for the same purpose in the summer of 2000 (*Schweizerische Stiftung zur Foerderung des Stillens*) intends to develop inter-disciplinary cooperation efforts in that field.

C. The rights of women patients

473. Over the past two decades, women have regularly petitioned for greater attention to their needs as patients. The "Patientenstelle" organization in Zurich is the country's oldest organization in that field. Its object is to strengthen the position of patients (both women and men) in the health care system through information, advice, exchange of experience and mutual aid. This organization has found that doctors of both sexes tend to ascribe women's complaints to emotional and psychosomatic factors while finding medical reasons for the same complaints in men.[155] Moreover, certain tests and treatments are prescribed for women at a later stage than for men (e.g. in cases of acute infarctus of the myocardium or asthma).[156]

474. Women's social and cultural origins affect their access to prevention. Foreign women take screening tests later and less regularly. Studies on migration and health show that access of foreigners of both sexes to the health system' benefits is hampered by communication barriers (cultural, linguistic and social). This partly explains the foreigners' generally poorer state of health. Regional differences also subsist, in particular as regards access to family planning. Offers addressed specifically to women are exceptional. Efforts to adapt the form, contents and dissemination areas of information intended for various female target groups are still in their infancy. The purpose of these efforts should be to provide women with the best possible information so as to enable them to extend their capabilities and to take independent decisions.

475. The importance of gender in patient/doctor relations has only recently begun to be studied. The doctor's sex plays a decisive role in decisions to undertake the surgical removal of an organ; women doctors are generally more reluctant than male doctors to practise a hysterectomy. While there are many women in the health service as a whole, they account for only 28.4% of doctors and for barely 26% of specialists in areas of special concern to women, such as gynecology and obstetrics.[157]

D. Medical treatment of female victims of violence

476. Violence against women is also very widespread in Switzerland (on this point, see paras. 87 ff concerning articles 1 to 4). Practically no work has been done on the consequences of violence to women's health.

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[155] Cf, Rosmarie Battaglia, Kaum wahrgenommen: Die Beduerfnisse der Patientinnen, in: Olympe, No.10, 1999.

[156] Institute of Social and Preventive Medicine, Basel University, Konzeptionelle Arbeiten zur Foerderung der Gesundheit von Frauen, Basel 1999, p. 21.

[157] Statistics from "Schweizerische Aerztezeitung", No. 16, 2000.

477. Under the Assistance to Victims of Offences Act (see paras. 107 ff above), the cantons are obliged to operate advice centres for victims of physical, moral or sexual violence. Some hospitals have recently introduced counselling among the services they provide and are offering special medical and psychological care to rape victims and sexually abused children. Investigations have shown, however, that women victims of violence often fail to use the health system's specialized services, where they are frequently treated in an inappropriate manner. Cases are not rare where the health system's reception structures are not even told that the wounds or pain complained of were caused by an act of violence, which naturally makes it more difficult for them to help the victim or to provide the correct treatment. In-depth treatment of the subject of violence against women in training and re-training programmes for medical personnel is therefore urgently needed.

E. HIV/AIDS prevention and treatment

478. The new national AIDS programme for 1999-2003 was launched early in 1999. Special prevention programmes designed for particularly vulnerable target groups are to be developed with a view to achieving sustainable effects. Particularly vulnerable groups include teenagers of both sexes and young adults having contacts with the drugs or prostitution scene, as well as certain categories of foreign women.

479. The following HIV and AIDS figures were recorded in Switzerland at end 1999:

Positive AIDS tests since 1985	24,422
Declared AIDS cases	6,780
Deaths	4,914

Women accounted for 35.6% of primary infection cases in 1999. This proportion is diminishing.

480. The proportion of foreign women among persons with declared AIDS is rising, women from sub-Saharan Africa being the most affected. The same applies to cases of HIV infection. This trend is still more marked among HIV-positive women, where the proportion of foreign women rose from 31% in 1994 to 53.2% in 1998, women of sub-Saharan origin forming the largest category (37% of all primary infections).

HIV/AIDS and pregnancy

481. Antiretroviral treatment before, during and after confinement, associated with a delivery by Caesarian, reduces the risk of the baby being contaminated by the mother by approximately 70%.[158] Screening for HIV can only be performed with the mother's consent.

[158] OFSP Bulletin 44/98, p. 10 ff.

Prevention of HIV/AIDS in women

482. Between 1994 and 1998, the Federal Office of Public Health (OFSP) organized a nationwide campaign on the subject of "Women's health and AIDS prevention". Experience acquired during the campaign is being used in developing an expanded programme of women's health promotion.

483. Twelve regions of Switzerland have AIDS specialists dealing specifically with prostitutes. The organization *Aide Suisse contre le Sida*, in partnership with its regional offices and other associations, has created a nationwide network of specialists in AIDS prevention among prostitutes. Adequate communication systems involving foreign languages and appropriate knowledge levels have had to be created to deal with foreign prostitutes. Thirty women mediators of different national origins, many of them former prostitutes themselves, are employed to transmit information on HIV to the prostitutes. They receive special training for their difficult duties and are in permanent touch with a woman supervisor.

484. The Migration Service of the OFSP is currently developing teaching aids designed to help staff at refugee centres to hold information sessions on HIV/AIDS prevention for asylum seekers of both sexes. In organizing such events, it is important to bear in mind that access opportunities are not the same for women and men. Some categories of foreign women cannot be reached by information sessions addressed to both sexes, which are often attended exclusively by men. The OFSP also plans to create an HIV/AIDS prevention programme specially for women from sub-Saharan Africa in 2001.

F. Drug addiction

Illegal drugs

485. The Federal Council, concerned at the worsening of the drug addiction problem, decided in 1991 to redouble its efforts in that field. Its strategy for combating the harmful effects of drug use rests on four pillars: prevention, therapy, risk reduction/survival assistance and, as a last resort, punishment.

486. Faced with a shortage of data on women drug addicts, OFSP commissioned a study designed to provide a conceptual basis for the development of special intervention strategies among female illegal drug users.[159] In 1990 OFSP also published a document addressed to members of the authorities and of specialized bodies, as well as interested specialists and politicians of both sexes, advancing arguments in favour of measures specially designed for women in the struggle against drug use.

487. These theoretical foundations must now be put into practice. The provision of assistance to women drug addicts, in particular at mixed-sex establishments, must be of maximum use to women. To that end, decision-makers of both sexes and at all levels must be made aware of the problem, mediators of both sexes must be trained, project preparation groups must be given the necessary advice and a set of professional documents on working with female drug addicts must be prepared. OFSP has published a booklet entitled "*Argumentaire pour une aide spécifique et*

[159] Marie-Louise Ernst, Isabelle Rottenmanner, Christine Spreyermann, Femmes – dépendances – perspectives, Berne 1995.

adaptée aux femmes consommant de la drogue" containing offers of special therapy as well as a practical guide for women.

Tobacco use

488. The very large number of smokers of both sexes, the large number of deaths connected with tobacco use (over 8 000 a year) and the strong increase in tobacco use currently noted among women and the young are making tobacco addiction one of the most serious public health problems Switzerland faces today. According to the 1997 health survey, the proportion of smokers among young men aged between 15 and 24 rose from 31% in 1992 to 43% in 1997. The proportion of smokers among young women in the same age group and over the same period rose from 26% to 41%.

489. A programme aimed at reducing health problems connected with tobacco use (*Programme Global Tabac – PGT)* was adopted by the Federal Council in 1995. It has facilitated the development of certain preventive measures, which, however, have not succeeded in halting the growth of tobacco addiction among women and the young. OFSP has therefore prepared a new nationwide prevention programme for 2001-2005 that avoids the previous one's shortcomings.

490. While the effects of general health policy measures, such as raising tobacco prices, restricting tobacco advertising, encouraging non-smoking and sponsorships, are the same for women and men, a gender-differentiated approach could prove useful in the sphere of communications. The OFSP has embarked on several projects in that area.

Alcohol consumption

491. In most societies, men consume alcohol in larger quantities and more often than women. In Switzerland, 75% of persons who consume alcohol daily are men. Twice as many women as men never or almost never drink alcohol. When women perform tasks traditionally set aside for men, their alcohol consumption increases considerably. Nevertheless, given an identical work situation, women drink less alcohol than men.[160] Certain studies report a rise in alcohol consumption among girls and young women; while 6% of girls aged 11-15 admitted to being inebriated at least three times a week in 1996, the figure had risen to 12% by 1998. The nationwide prevention campaign entitled "Where Does It Get You?", conducted by OFSP together with the Swiss Institute for The Prevention of Alcohol Problems (ISPA) and the Federal Alcoholic Beverages Board, is aimed at reducing alcohol consumption. The efficacy of measures specifically targeted at one of the sexes (references to pregnancy, metabolic differences, risk of breast cancer) is being studied under the same programme. The problem of alcohol consumption during pregnancy has already been ventilated in several projects. Women's special needs are taken into consideration in the treatment of alcoholics, which is principally the responsibility of the cantons and communes. The fact needs to be known, for example, that alcoholism in women often goes hand-in-hand with dependence on pharmaceuticals.

[160] Institute for the Prevention of Alcoholism and Other Drug Addictions (ISPA), Alcool, tabac et drogues illégales en Suisse de 1994 à 1996, Lausanne 1997.

492. Statistics show that while men account for 75% of persons treated for alcoholism or drug addiction, 80% of persons seeking help from an advice centre in connection with an addiction problem in the family are women.[161]

493. Women take many more sleeping drugs, tranquillisers, painkillers, anti-rheumatism medicines and stimulants than men. Responding to a survey, 15.3% of the women questioned said that they consumed a substance of this type at least once a day, as against only 9.5% of men.

G. Mortality and morbidity[162]

494. In 1997, life expectancy in Switzerland was 76.2 years for men and 82.3 years for women. Mortality has declined more markedly for women than for men in recent years, the difference between the life expectancies of the two sexes becoming greater as a result. The main reason for this is that more men than women die before the age of 70 as a result of accident, suicide, wounds, malignant lung tumours or cirrhosis of the liver.

495. In Switzerland, as in the rest of Europe, cardio-vascular diseases and cancer are by far the most frequent causes of death. However, fewer women than men die of cardio-vascular diseases. Breast and lung cancers are the cancers most often lethal for women, while for men they are prostate cancer, lung cancer and cancer of the colon. In Switzerland, fewer women than men suffering from cancer die of that disease.

496. Cancer as a cause of death: number of deaths per 100 000 persons, by gender and by type of cancer, 1997

	Women		*Men*	
All tumours	127.8		218.7	
Stomach		4.6		10.6
Colon		9.7		16.1
Lung		12.6		53.0
Breast		29.0		0.3
Uterus		1.9		-
Prostate		-		31.7

497. According to the 1992/93 health survey, women ask for cancer screening more often than men; 60 to 70% of women aged between 25 and 64 take screening tests (in particular, gynecological tests), while only a quarter of men under 55 do so. The proportion of men becomes higher than that of women only after age 65.[163]

498. The Swiss League for Cancer Control, in close cooperation with OFSP and other partners, has launched several nationwide campaigns, one of which was concerned with the prevention of lung, skin and breast cancer. A programme for the prevention of intestinal cancer is to be launched shortly.

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[161] Federal Statistical Office, Prises en charge ambulatoires des problèmes de dépendance en 1997. Statistique du traitement et de l'assistance ambulatoire dans le domaine de l'alcool et de la drogue (SAMBAD), Neuchâtel 1999.

[162] Statistical Yearbook for Switzerland, 2000.

[163] Astrid Stuckelberger, François Hoepflinger, Vieillissement differentiel : hommes et femmes, Zurich 1996.

Breast cancer

499. The 1997 health survey showed that 91% of women over 20 nationwide had had their breasts examined by palpation. In the case of 68% of those women, the test had been carried out less than a year before the survey. However, the frequency of testing declines with advancing age; 61% of women aged 35 to 49, 53% of those aged 60 to 64 and only 37% of those aged 65 to 74 had been tested during the twelve months preceding the interview. This finding is in inverse proportion to the incidence of new breast cancer cases, which rises with age. Nationwide, 35% of women aged 20 and over declared having had a mammography. The frequency is higher among those aged 50 to 69 (56%). On national average, only 28% of women aged 50 to 69 said that they had had a mammography within the past two years.

500. In 1996, OFSP and the Swiss League for Cancer Control decided, in conformity with WHO recommendations, to launch a nationwide campaign to combat breast cancer. A working group composed of specialists in cancer treatment and prevention was entrusted with outlining long-term strategies aimed at reducing the incidence of breast cancer and the number of deaths due to that disease, improving the quality of life of patients and ensuring access for all women to prevention and care.[164] The working group recommends inter alia that all women should have their breasts medically examined every year and should palpate their own breasts regularly in order to detect any sign of cancer. Health insurance companies cover one mammography a year for women with a case of breast cancer in their immediate family and one every two years after age 50 for other women. Efforts are under way to promote cancer detection by mammography everywhere in the country.

Cancer of the uterus

501. Each year, around 11 out of every 100,000 women in Switzerland develop cancer of the uterus. 81% of women declare having had a cervical smear test, younger women more recently than older ones (over 4 years on average). Although cancer of the uterus is more widespread among older women, fewer of them appear to request a smear test. Under the new Health Insurance Act of 1996, health insurance companies must reimburse the cost of a gynecological prevention test once every three years.

Other frequent causes of death

502. Vascular diseases: number of deaths by gender per 100,000 persons, 1997

Disease	*Women*	*Men*
Vascular diseases in general	182.8	298.3
Heart disease of all kinds	130.8	226.3
Cardiac ischemias	69.9	145.7
Cerebral vascular diseases	39.0	49.3
Embolisms, pulmonary infarctus	4.0	3.6

[164] Federal Office of Health / Swiss League for Cancer Control, Cancer du sein. Connaitre et agir. Programme de lutte contre le cancer, Berne 1996.

503. Although cardio-vascular diseases are the prime cause of deaths among women, their diagnosis still leaves much to be desired. But women develop such diseases 10 to 20 years later in life than men because, prior to the menopause, they are protected by oestrogens and because their general lifestyle does not encourage these diseases to develop (women smoke less, drink less and are less overweight than men). In order to draw women's attention to the dangers of cardio-vascular disease, the Swiss Cardiology Foundation launched a campaign entitled "Woman and Heart" in 1998 and 1999.

504. Accidents and wounds: number of deaths by gender per 100,000 persons, 1997

	Women	*Men*
Accidents and wounds	24.1	62.2
Accidents of all kinds	13.5	33.2
Traffic accidents	3.4	11.3
Suicide	8.8	26.2

505. More than half the gender differences in mortality before age 70 are due to differences in the accident and suicide rate. Men lead more dangerous lives than women, work in more dangerous jobs and take greater risks on the road. Their suicide rate is considerably higher than that of women in all age brackets. Although the number of accidents has greatly diminished in recent decades while that of suicides has risen, the gender differences have remained practically unchanged.

Subjective health[165]

506. When questioned about their state of health, women appear to be less well than men. They generally consider themselves to be in poorer health than men. Their replies suggest that women suffer more from certain kinds of pain and are more afraid than men of falling ill (33.5% as against 24.3%). Several indicators of the 1997 health survey showed women in disadvantaged categories to be in less good health than men in the same categories.

507. Four of the most widespread categories of physical discomfort, breakdown by gender, 1997

	Women		*Men*	
Discomfort suffered during the 4 weeks preceding the survey	***Slight***	***Severe***	***Slight***	***Severe***
Backache	37.2%	13.4%	31.9%	7.5%
Weakness, lack of energy	44.2%	9.0%	35.0%	4.9%
Headache	35.1%	11.3%	28.7%	5.8%
Sleeping problems	32.8%	10.2%	25.2%	5.6%

[165] Federal Statistical Office, Enquête suisse sur la santé. Premiers résultats, Neuchâtel 1998.

H. Categories of particularly disadvantaged persons

Treatment and care of traumatized women from conflict areas

508. In Switzerland, such problems are handled by the Red Cross Therapy Centre for Victims of Torture, located at Berne. The Centre, which receives financial support from the Confederation, deals with women and men suffering from physical, psychological, psychosomatic or social consequences of severe violence due to war or torture. However, the rules governing the Confederation's subsidies stipulate that a person claiming the Therapy Centre's assistance must be in possession of a residence permit. Persons whose application for asylum is pending are only exceptionally placed on the waiting list. The Centre offers both individual and family psychotherapies.

509. Since the Centre cannot deal with all victims of violence and torture in need of assistance, a coordination service has been set up to put victims, social workers, organizations and institutions in touch with specialists, especially in crisis situations. A specialized service entitled "Migration and Health", launched by Caritas Switzerland in the eastern part of the country in 2000, will also provide mediation services to traumatised migrants of both sexes.

Foreign women

510. Foreign women and men, including asylum seekers and refugees, like Swiss nationals, are obliged to have compulsory health insurance (see paras. 400 ff above). Women and men have the same entitlements to medical care. Asylum seekers, provisionally admitted persons and protected persons without a residence permit are insured with recognized health insurance companies, but their choice of insurers and medical services suppliers is limited. Persons whose refugee status has been recognized and protected persons with a residence permit are treated on the same footing as the Swiss population.

511. As already stated, foreign women sometimes encounter special difficulties in obtaining access to the health system's services. Special assistance, e.g. from an interpreter or a cultural mediator, is needed in order to overcome these difficulties. OFSP has appointed an outside institution to define certain educational and quality standards for interpreters working in the health system, and also to run a coordination centre. The question of gender differences in terms of access to health services of various groups of the foreign population needs to be studied in greater depth.

512. The OFSP migration service, together with other services of the Confederation, is currently working on a strategy in the field of health and migration for the years 2001-2005 with a view to eliminating discrimination against foreign women and promoting gender equality.

Older women

513. Women in Switzerland live longer than men but their state of health in old age tends to be less good. According to a study conducted under National Research

Programme No. 32 devoted to old age,[166] older women consider their state of health to be less good than that of men of the same age. They see a doctor more often and take more medicines, in particular sleeping pills and tranquillisers. On the other hand, older women take more care of their health than men; they are rarely overweight, smoke less and consume less alcohol. Severe disease is likewise less widespread among older women, who tend to suffer from diseases that are chronic but not lethal, such as diabetes, arthritis, rheumatism and osteoporosis. These chronic diseases often cause handicaps. That, as well as women's longer life expectancy, is the reason why there are more handicapped women than men and why women need more medical care. Cerebral diseases like senile dementia and Alzheimer's affect more women than men because women live longer.

514. Factors other than biological ageing and lifestyle also affect the state of health of older women. Many married women take care of their disabled husbands so as to avoid or delay sending them to a home for the aged. Conversely, older women living alone are more independent and tend to continue running their own household longer without outside help. Given the difference in life expectancies, far more women tend to be widowed than men. The loss of a spouse often has dire consequences for the survivor's health. Moreover, women – especially unmarried ones – often have inadequate pensions and are obliged to claim supplementary AVS benefits. Financial resources affect their housing and lifestyle, which in turn has repercussions on both their subjective and objective state of health. Lastly, many single or widowed women of advanced age live in relative isolation and have no support network to call upon in case of ill-health. Aged migrant women who have lived in Switzerland for many years, have family ties there and no longer wish to return to their country of origin often have to contend with serious psychological difficulties.

Handicapped women

515. Handicapped women are exposed to various forms of discrimination, in particular in the field of health. There are several associations for the handicapped, but no specific one for handicapped women. The Swiss Association of the Disabled (ASI) has therefore set up a women's group to work towards improving the situation of handicapped women by encouraging their confidence in themselves and by creating various systems of mutual help and support, experience sharing and representation of interests. ASI offers courses and holds symposia on these topics.

516. The discovery of a number of cases of forced sterilization of handicapped women has revived the debate on the question of motherhood of handicapped and, especially, mentally handicapped women. Notwithstanding the directives on that question issued by the Swiss Academy of Medical Sciences (ASSM) in 1981and subsequently supplemented by recommendations, Switzerland has no uniform rules binding for the country as a whole.[167] The Federal Council's Committee of Experts on Guardianship has set up a working group mandated to submit proposals for standard regulations at the national level. In the year 2000, pursuant to a parliamentary initiative requesting the payment of appropriate compensation to

[166] Maryvonne Gognalons-Nicolet et al., Genre et santé après 40 ans, Berne 1997; also see François Hoepflinger, Frauen im Alter – Alter der Frauen, Zurich 1997.

[167] Conference of umbrella organizations for private assistance to the handicapped, Diskriminierung behinderter Menschen in der Schweiz, January 1998.

persons who had been forcibly sterilized, the National Council instructed its Legal Affairs Committee to prepare a draft Act to that effect.

517. Moreover, certain principles are laid down and limits defined in a Council of Europe convention of 1997, couched in gender-neutral language. The Federal Council has decided to accede to this treaty.[168]

I. Implementation of equality objectives in the field of health in Switzerland's development cooperation

518. Switzerland's development cooperation takes women's needs into account in its health policies as part of a global approach to health issues. It recognizes that health is a human right. Women's empowerment and the improvement of the status of women are among the declared policy objectives of the Department for Development Cooperation (DDC). One of the strategies used to that end consists in promoting a gender-balanced approach to the development of health systems meeting the needs of both sexes. Programmes and projects at all levels, from the local community to the health sector as a whole, must take the gender perspective into consideration and must meet women's elementary needs in relevant areas. For example, work is currently being done in Mozambique and Tanzania to ensure that the gender dimension is systematically integrated in the health programme of Switzerland's development assistance.

519. As part of the implementation of the Cairo and Beijing programmes of action, the DDC's health service proposes to place still greater emphasis on the special topic of health and procreation. Swiss development cooperation also supports international organizations active in that field. While it has at present no general policy on AIDS, the ad hoc activities it has undertaken in some countries may be developed further in future.

520. A DDC policy on AIDS is in process of preparation. One section of the Department has already drafted a set of directives applicable to its field of action. Support of campaigns and other activities in certain countries is to be developed further. At the multilateral level, Swiss development cooperation is actively participating in the UNAIDS programme, in particular through financial support.

Article 13 of the Convention – Elimination of discrimination in other areas of economic and social life

A. Poverty among women

De facto situation

521. No periodic surveys on the subject of poverty are conducted in Switzerland at the present time. A first nationwide study in 1997 furnished important information on the situation of women. Analyses of that situation differ depending on the definition of poverty adopted.[169] Whether the criterion used is the threshold for

[168] Convention of 4 April 1997 on Human Rights and Biomedicine (Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine), ETS no. 164.

[169] Robert Leu / Stefan Burri / Tom Priester, Lebensqualitaet und Armut in der Schweiz, Berne 1997; Brigitte Buhmann, Wohlstand und Armut in der Schweiz, Gruesch 1988.

receiving supplementary benefits or that of the Swiss Conference of Social Action Institutions (CSIAS), the poverty rate does not show any marked gender differences, with the exception of the category of divorced women in which the poverty rate is higher than average. This group includes, in particular, the majority of single-parent families. In the case of widowed men, on the other hand, the poverty rate is below average. The largest group in the entire population classified as "poor" (nearly 40%) is composed of persons married to a wage-earning partner.

522. Poverty is a complex phenomenon that is seldom due to only one cause. The risk of poverty depends on multiple factors that may be cumulative, e.g. gender, civil status, nationality, education, regional situation, age and state of health. This emerges from a recent study on the "working poor" published by the Federal Statistical Office.[170] According to this study, the categories of people most threatened by poverty despite being employed are parents bringing up children single-handed, parents of large families, unskilled persons and self-employed persons working alone. Between 1992 and 1999 the proportion of "working poor" among persons bringing up their children single-handed rose from 14.8% to 29.2% and among parents of large families from 11% to 17%. In 1999, 7.5% of employed persons aged between 20 and 59 years formed part of these "working poor" (250,000 persons or up to 535 000 persons including families). Six per cent of households whose combined adult members work for at least 36 hours a week are poor (6.5% women, 5.7% men). But in households whose combined adult members work for less than 36 hours a week (a category composed principally of women), the proportion of "working poor" is very much higher, namely 29% (29.8% women, 27.3% men).

523. An analysis conducted by the Federal Coordinating Committee on Family Issues[171] confirms that single mothers and elderly women are far more exposed to the risk of poverty than other people. According to this paper, the main causes of female poverty are (a) that women are still trapped in their traditional role as housewives and mothers and (b) that the value of the work they perform in that capacity (upbringing and care of children, assistance to other family members, housework) is not sufficiently recognized in financial and social terms.

524. The main cause of poverty among single women is the insufficiency of their earnings or pension. This generally goes hand-in-hand with inadequate schooling or vocational training, health problems, pregnancy, part-time work or unemployment. The greatest problem for women living with a partner is insufficiency of the family income. The causes for this may be the same as in the case of single women, in addition to which the man may still be paying alimony or child maintenance to a former partner. In the case of large families, the high rents charged for large apartments are also a major factor. Foreign women, especially if they are single mothers, are more likely to be poor than Swiss women.[172]

525. Women bringing up their children single-handed often face problems due to insufficient, non-existent or unpaid child maintenance. The Civil Code[173] does, of

[170] Elisa Streuli / Tobias Bauer, Working Poor in der Schweiz. Eine Untersuchung zu Ausmass, Ursachen und Problemlage, infocial no. 5, April 2001.

[171] Les effets de la pauvreté et du chömage sur les familles, recommendations of the Federal Coordinating Committe on Family Issues, Berne 1998.

[172] Federal Statistical Office, La population étrangère en Suisse, Neuchâtel 2000.

[173] Swiss Civil Code, 10 December 1907 (CCS), SR.210.

course, provide that cantonal guardianship authorities must assist all persons that so request to obtain the maintenance payments to which they are entitled.[174] But not all cantons have institutions empowered to advance and recover maintenance payments. Moreover, few part-time jobs pay well enough to enable the mother to look after her child or children while she is at work; and continuous training opportunities that could improve her work situation are often non-existent.

Social assistance and poverty control

526. In its article 12, the new Federal Constitution, which came into force in the year 2000, explicitly sets forth a new *individual right of persons in distress to be helped and assisted* and to receive the means indispensable for leading a life in human dignity. In 1995, the Federal Supreme Court acknowledged the right to minimum conditions of existence as an unwritten constitutional right capable of being asserted in justice; to have the minimal conditions of existence is a condition sine qua non for the exercise of all other fundamental rights, and the duty to ensure the population's subsistence forms part and parcel of the collective duties inherent in the rule of law and democracy.[175] But the contents of this right are still vague and the benefits it guarantees in terms of public assistance cannot be quantified.

527. The Confederation's social insurance covers a large part of certain poverty hazards – old age, death of a spouse or parent, disablement, sickness and accident, unemployment (see paras. 372 ff above relating to article 11 of the Convention; for family and children's allowances, see paras. 529 ff below). All other public social assistance in Switzerland is the responsibility of the cantons and communes. Its purpose is not only to guarantee the subsistence of needy persons but also to promote their economic independence and their integration in society. The directives published to that effect by the Swiss Conference of Social Action Institutions (CSIAS), while not binding, have been widely adopted by the cantons. A Federal act lays down a number of principles and defines the cantons' responsibilities and reciprocal repayment obligations.[176]

528. The struggle against poverty cannot be limited to social assistance. The complexity of the causes of poverty means that action to achieve a radical improvement of the economic situation of the persons affected can be taken in many areas. There can be no doubt that measures referred to earlier in this report aimed at eliminating stereotypes, ensuring better integration of women in the labour market and raising women's educational levels are all linked with the struggle against poverty.

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[174] Art. 131, art. 290 CCS.

[175] See e.g. ATF 127 I 367; 122 I 101; 121 I 367; Charlotte Gysin, Der Schutz des Rxistenzminimums in der Schweiz, Basel 1999; Andreas Auer / Giorgio Malinverni / Michel Hottelier, Droit constitutionnel suisse, vol. II, les droits fondamentaux, Berne 2000, pp. 685 ff. See also initial report of Switzerland under the International Covenant on Economic, Social and Cultural Rights, paras. 449 ff; Joerg Kuenzli / Walter Kaelin, Die Bedeutung des UNO-Paktes ueber wirtschaftliche, soziale und kulturelle Rechte fuer das schweizerische Recht, in: Walter Kaelin / Giorgio Malinverni / Manfred Nowak (ed.), Die Schweiz und die Menschenrechtspakte, 2nd edition, Basel/etc. 1997, pp. 127 ff.

[176] Federal Act of 24 June 1977 on respective competences in the matter of assistance to needy persons (Federal Assistance Act, LAS), RS 851.1.

B. Family allowances

529. Article 116, paragraph 1 Cst provides that the Confederation, in fulfilling its tasks, must take into account the needs of the family and may support measures designed to protect the family. The next paragraph of the same article empowers the Confederation to legislate on family allowances. This power has not been fully exercised to date. In 1952 the Confederation set up, for the agricultural sector alone, a system of family allowances for wage-earning farm workers and self-employed farmers (of both sexes) with incomes below a certain ceiling. Family allowances for all other population categories remain within the purview of the cantons.

530. *Family allowances in the agricultural sector* are intended for wage-earning farm workers and small farmers.[177] All such persons with dependent children, including dependent brothers and sisters, are entitled to the allowances, which are paid until the child's 16th birthday (25th birthday if the child is receiving education, 20th if he/she is unable to maintain him/herself for reasons of ill-health or disablement). In addition, wage-earning farm workers of both sexes receive a household allowance if they are married or have children, irrespective of whether they maintain a household of their own or live with the employer.

531. The Confederation in its capacity as employer pays an allowance for children (including adopted children, children of a previous marriage and foster children). In case of full-time employment the allowance is 3950 Swiss francs a year for the first child and 2550 Swiss francs for each subsequent child. It is paid until the age of 18 (25 if the child is receiving education). One-half of an allowance may be paid to spouses if they are permanently disabled by serious ill-health or are taking care of a close relative or relatives.

532. *Cantonal family allowance systems* are intended for wage-earners of both sexes in sectors other than agriculture. They are financed exclusively by the employer, generally through deduction of a percentage of the wage. Some cantons also pay family allowances to self-employed persons of both sexes and to non-working persons if their income is below a certain ceiling. Family allowances are paid starting with the first child. Depending on the canton, the monthly child allowance varies between 140 and 294 Swiss francs per child. In 14 cantons, when the child enters an apprenticeship or takes up post-compulsory general training or studies the family allowance is replaced by a monthly contribution towards the costs of professional/vocational education, which is generally higher (between 165 and 378 Swiss francs per child, depending on the canton). Ten cantons pay a single lump sum of from 600 to 1500 Swiss francs on the birth or adoption of a child. One canton has introduced a household allowance and another pays a special allowance to large families. In addition to a child allowance and an education allowance, the canton of Ticino pays a so-called "integration" allowance and an infant allowance, both of which are subject to a ceiling and are calculated in relation to the family income. All child allowances are, in principle, paid until the child's 16th birthday. If the child is sick, disabled or receiving education and therefore unable to take up a paid activity, the child allowance continues to be paid, the age limit varying between cantons from 18 to 25 years.

[177] Federal Act of 20 June 1952 on family allowances in agriculture (LFA), RS 836.1.

533. In principle, the right to allowances is determined in most cantons on the basis of the *degree of occupation* criterion (proportion of full time worked). Persons in part-time or accessory employment, the majority of whom are women, are therefore entitled only to a partial allowance. However, several cantons pay the full allowance to part-time workers whose "degree of occupation" reaches a certain threshold. Several cantons give more favourable treatment to single parents. The canton of Geneva is the only one to date to have adopted a Family Allowances Act based on the "one child – one allowance" principle. In that canton, the child allowance no longer depends on the parents' employment situation.

534. In the case of *competing rights of two spouses* living together, some cantons give priority to the rights of the husband, while in others the rules are gender-neutral. Thus, in several cantons, the allowance is paid to the spouse entitled to claim the higher amount, or else the spouses decide between themselves which of the two shall receive the allowance.

535. Family allowances do not cover the expenses actually incurred by parents for their children. The "one child - one allowance" principle cannot be said to have been fully achieved anywhere for the present, and lacunae continue to exist, e.g. as regards self-employed and non-working persons. Several attempts to fill these lacunae with standard Federal regulations have failed in the last few years. A draft Federal act on family allowances has been prepared in response to a parliamentary initiative. The Federal Chambers are to take a decision on it in 2001. In March 2001 the National Council approved two initiatives proposing the introduction of supplementary benefits for needy families.

C. Access to credit

536. Swiss law makes no distinction between men and women in connection with bank loans, mortgage loans or other credit. However, the fact that women do far more unpaid work, have smaller incomes and own less property than men has a negative influence on their solvency status.

537. Since the review of the marriage laws in 1988 (see para. 60 above), there is no provision restricting the capacity of married women to take decisions and enter into obligations. Article 168 CCS states that both spouses may conclude all legal acts between themselves and with third parties, unless the law provides otherwise. This reservation is designed to protect the spouses from ill-considered commitments and does not contravene the gender equality principle. Thus, the spouse's consent is, in principle, required in order for the validity of a married person's guarantee to be recognized (art. 494 CO). The same applies to agreements concerning hire purchase or prepayment (arts. 226b and 228 CO).

538. For the situation in cases governed by transitional provisions, where the marriage continues to be subject to the old law and the wife's capacity to act in connection with the management of common property is somewhat restricted, see paras. 563 ff below relating to article 15 of the Convention.

D. Access to recreational activities, sports and all aspects of cultural life

Formal equality of access opportunities

539. Responsibility in these areas rests in most cases with the *cantons and communes*, which operate leisure centres (e.g. youth centres) and sports grounds and set aside public spaces for these purposes. In the matter of sports and culture, which are essentially regarded as recreational activities, the Confederation has certain parallel responsibilities (arts. 68, 69 and 71 Cst). Under art. 68 Cst it is required to promote sport and, in particular, sport education. Responsibilities in the field of encouragement of culture conferred upon it by arts. 69 and 71 are expressly subsidiary to those of the cantons.

540. No formal infringements of the rights of women or of women's access to available activities exist in the fields of sport and culture. The numerous private organizations and associations concerned with recreational sports and cultural activities are very generally accessible to both sexes.

541. A survey on the situation of girls and women in Swiss youth associations conducted by the Federal Bureau for Gender Equality and the Federal Office of Culture in 1992[178] revealed the existence of structural and behavioral patterns that prevent girls and women from making their voices heard and respected in sports associations. This is reflected, for example, in the fact that women are regularly under-represented on the associations' governing bodies.

Arts and culture

542. In the field of the arts, the formal conditions for admission to training workshops, access to scholarships and study grants, conditions for the allocation of subsidies for cultural projects, and qualifications for prizes are the same for both sexes.

543. This applies, in particular, to the Confederation's legislation and practice, e.g. in the encouragement of applied and plastic arts, film and youth activities. In developing their encouragement policies on the basis of criteria pertaining to contents and quality, the relevant services of the Federal Office of Culture are guided by the principle that women artists must have the same chances of success as their male colleagues. Non-sexist language is used in all official documents (competition conditions, reports). Only the 1998 directives concerning the use of credits in support of cultural organizations explicitly list "encouragement of artistic creativity among women" as a criterion for the allocation of funds. These credits are used to fund certain organizations particularly concerned with the advancement of women in the arts, such as the Music and Women Forum, the Women Writers' Network *(Netzwerk schreibender Frauen)* and the Swiss Society of Women Artists. Credits for the encouragement of out-of-school youth activities are allocated in accordance with a points system, women's participation being one of the criteria. In

[178] Federal Bureau for Gender Equality / Youth Service of the Federal Office of Culture, "Auf Baeume klettern koennen wir auch ganz allein!". Ein Bericht zur Situation von Maedchen und Frauen in den Schweizer Jugendverbaenden, Berne 1992.

the past few years, support has been granted to innovative projects for the advancement of girls and women in this field.

544. No representative data exist concerning the *gender distribution of public funds* channelled towards the encouragement of culture at either Federal or cantonal level. Some gender differentiation does occur but its underlying causes have not yet been properly studied. For example, in the year 2000 the Swiss cultural foundation Pro Helvetia awarded grants to 9 men and 3 women writers in German-speaking Switzerland. 6 men and 3 women writers in the French-speaking part, 2 men and 1 woman writer in the Italian-speaking part and 3 women writers in the Romansh-speaking part of the country.

545. Since the 1970s women have been increasingly present in cultural life and have developed an artistic consciousness different from that of men. Feminist groups have sprung up in many areas of art and culture. However, despite the marked increase in the number of women in the arts, decision-making bodies in theatre, music and the fine arts continue to be dominated by men.

546. The proportion of women receiving cantonal subsidies, scholarships and prizes varies depending on the sector (music, film, dance, theatre, fine arts, literature) or even the sub-sector (e.g. classical/contemporary music or different styles of contemporary music). As a general rule, however, fewer women than men receive subsidies, except perhaps in dancing, where women predominate. It should also be noted that the prizes and other distinctions several cantons have created to honour their artists have mostly been awarded to men and only very rarely to women. Such special encouragement as a few cantons do give to women's cultural activities is generally confined to support of projects and events (literary congresses, film festivals, exhibitions, etc.), institutions (e.g. archives) or publications (e.g. concerning women's history) specifically relating to women. The great majority of cantons take no special steps to encourage women's cultural activities.

Sports

547. Formally, women enjoy equal access to sports activities, associations and training. Although women have, in recent years, become increasingly integrated in the previously male-dominated area of sport in general, their independent status in organized sport has been preserved in many cases. Although sports associations are opening up more and more for activities by both sexes, the practice of most organized sports activities remains separate. Women's teams in collective sports, physical education groups for women, women's gymnastics, etc., are accepted as unquestioned facts of life.

548. Gender equality in *competitive sports* is not by any means attained. Women have access to fewer sports disciplines and competitions, are governed by different rules and their performances are less well rewarded. Women wishing to compete in a sport regarded as masculine (e.g. football or ice hockey) always have major obstacles to overcome. With only rare exceptions, high-level sportswomen enjoy far less prestige than high-level sportsmen.

549. Swiss Olympic (AOS) is the Swiss sports associations' umbrella organization. Its executive council has 15 men and 2 women members and the "Elite Sports" committee does not have a woman on it at all (the "Sports for All" committee has three women members out of a total of 8). A delegate for women's issues is

supposed to ensure the advancement of women in all fields, assist women within the associations and set up a women's network within AOS. Swiss Olympic has 80 member associations. Only a few of these are presided by women, although many women hold the post of association secretary. The Swiss Gymnastics Federation, which incorporates the men's and women's gymnastics federations, has introduced a quota system as a result of which it now has the same number of men and women on its governing board.

550. In so far as financial assistance to sports installations and events is a cantonal responsibility, gender equality is generally observed in practice. Most cantons assert that they do not differentiate between the sexes in granting financial support to sports installations and events and guarantee equal access for women and men. There are no statistical data to suggest that public sports subsidies may be being allocated in a gender-differentiated manner. The current general tendency for hitherto gender-separated sports associations to merge into a single one makes it still more difficult to tell how cantonal subsidies are in fact being used. Some cantons give financial support to specifically female sports events (women's races, sports classes designed specially for women, etc.) with a view to increasing the number of women actively practising a sport.

E. The struggle against poverty among women in Swiss development cooperation

551. By virtue of its legal mandate, Swiss development cooperation must contribute towards the reduction of poverty in partner countries. Since poverty affects women differently from men, the gender dimension is of particular importance in this context. Measures are being taken at all levels. At the macro-economic level, support is given to the partner countries' efforts to analyse the expenditures of the State or of specific ministries and their impact on women. At the micro-economic level, efforts are being made to take women's needs into account in many sectors, e.g. water supply projects, employment programmes, encouragement of micro-enterprises, savings and credit projects, agricultural and environmental projects, etc. Women's NGOs specially engaged in defending women's social and economic interests are receiving support in a great number of countries. Women's empowerment projects also contribute towards reducing poverty (in that connection see paras. 203 ff above concerning article 7 of the Convention).

Article 14 of the Convention – particular problems facing rural women

552. Some 40% of the population live in predominantly rural areas, which account for over 80% of the total area of Switzerland. Owing to its federal system, Switzerland has a dense network of small- and medium-sized cities whose essential function is to serve as urban centres for their areas. The increasing mobility of the population and the accompanying development of the communications network have further shortened distances in what was already a small territory.

553. A look at the employment rate by gender reveals that the women's employment rate (number of women in employment in relation to the working-age population as a whole) is lower in rural than in urban areas, the opposite being true of the employment rate for men. Women's "degree of occupation" (proportion of full time worked) is closely linked to the availability of jobs, which in urban areas are both

more varied and better adapted to the women's educational level. The small proportion of women among the working population in rural areas is due, to a far from negligible extent, to the shortage of part-time jobs. Differences in population patterns also play a part; the proportion of married women with children is far larger in the countryside.

554. A basic supply of education and health services is today guaranteed in all regions of Switzerland. But the network of women's services is less dense in the countryside than in the towns, where the bulk of health services and basic or recurrent education services designed specifically for women is to be found. Furthermore, access to child-care services in rural areas is by no means guaranteed.

555. The Confederation's *regional and territorial organization policies* include all measures of an economic nature adopted with a view to influencing the development and distribution of the population and of economic activities between various regions of Switzerland. The Confederation's goal in this field is to promote competitiveness and sustainable development in all regions and to maintain the quality of life in decentralized inhabited areas. So far as rural areas are concerned, the Confederation has, as a first step, adopted structural measures in support of *mountain regions*. Federal assistance to investment in mountain regions is aimed at improving the development and competitiveness conditions of the regions concerned, promoting the exploitation of regional potentials, preserving decentralized urbanization, contributing towards the country's autonomy and socio-cultural diversity, guaranteeing sustainable development in mountain regions and promoting cooperation between communes, parts of regions and regions. With this aim in view, the Confederation grants preferential or interest-free loans in support of individual projects or programmes pertaining to infrastructures. Moreover, the Confederation offers guarantees and interest cuts to facilitate the granting of loans to small and medium-sized enterprises in mountain regions. In 1997, the Confederation adopted measures in support of structural changes in rural areas. No data are available on the effects of these measures on rural women and no research on that subject has been undertaken.

556. *Agriculture*, currently traversing a period of radical change, plays a crucial role in rural areas of Switzerland. The share of agriculture in the creation of wealth within Swiss economy as a whole is steadily diminishing. Structural changes, developments in consumer behaviour and falling prices of agricultural produce have all contributed to this trend. The number of farms, especially those with an area of less than 3 hectares, has diminished in recent years. It should be noted, however, that by protecting the landscape, agriculture contributes towards the development of other economic sectors such as tourism.

557. Whereas employment in agriculture and forestry still accounted for 14.5% of the working-age population in 1960, the figure had fallen to 4.5% by 1996. Conversely, the proportion of women employed in agriculture has risen in all age brackets. One-third of all persons working in agriculture are women. There are far fewer women among persons working full-time than part-time. Women account for one-third of persons working on family farms, but only a small proportion of women (approx. 3.4%) are classified as self-employed farmers. Thirty per cent of farms are operated on a "second income" basis; women do most of the work on these farms, while the men go out to earn the family's main income by non-agricultural work. Women's wages in agriculture are always lower than men's. The 1998 ESPA survey

estimated the gross annual income from paid agricultural work at 60 000 Swiss francs for men and 40 000 Swiss francs for women.

558. The Agriculture Act[179] makes no formal distinction between men and women. While there are no studies dealing specifically with Switzerland, it can be assumed that comment made by the European Commissioner for Agriculture in 1996 to the effect that past and present public aid to agriculture is rarely granted specifically to women applies to Switzerland as well.

559. The new Agriculture Act introduced a system of direct payments by the Confederation, which has drawn criticism on the grounds of social relations between the sexes. Direct payments today represent the major part of public subsidies to agriculture. The right to receive them is subject to certain income and property conditions; beyond a certain level, the amount of direct payments is gradually reduced until it dwindles to zero. But this level is established by adding together the income and property of both spouses, leaving out of account the origins of the income and property. The system therefore places at a disadvantage those married couples where one of the spouses – generally the woman if the farm is the family's principal source of income – also has a job off the farm. In the desire to take these considerations into account, the Federal Council has recently set new income and property ceilings and will shortly re-examine the direct payments system in order, in particular, to ascertain whether gradually diminishing subsidies meet the desired purpose and what social repercussions they entail.

Article 15 of the Convention – equality before the law (enjoyment of civil rights, free choice of residence and domicile)

A. Enjoyment of civil rights

560. Recognition of the legal personality of all individuals is inferred from the constitutional right to personal liberty (art. 10, para. 2 Cst). According to the case law of the Federal Supreme Court, that right protects all liberties that are elementary manifestations of the free development of the human person.[180] Recognition of legal personality applies to Swiss and foreign nationals of both sexes.

561. Article 11 CCS defines *the enjoyment of civil rights* as follows: all human beings, men and women, have, within the limits of the law, the same capacity to becomes subjects of law and of obligations. Legal personality is protected from birth until death. Before birth, a child that has been conceived enjoys civil rights provided that it is born alive (art. 31, para. 2 CCS). The capacity of all human beings to enjoy rights tolerates no exception.

562. On the other hand, full exercise of rights is confined to persons who are of age and capable of discernment; only such persons can fully commit their responsibility through their actions and can *fully exercise their rights*. Persons incapable of discernment are not entitled to exercise civil rights; persons who are under age or prohibited but capable of discernment are only partially deprived of such exercise. According to the guardianship laws, a person is declared prohibited and, consequently, his/her capacity to exercise civil rights is withdrawn in certain cases (persistent drunkenness, prodigality, feeblemindedness, the incapacitated person's

[179] Federal Act of 29 April 1998 on agriculture (Agriculture Act, Lagr), RS 910.1.
[180] Cf. e.g. ATF 118 Ia 315.

own request, arts. 369 ff CCS). The appointment of a legal advisor (guardian, tutor or trustee) can also restrict the exercise of civil rights (art. 395 CCS). According to article 27 CCS, no one can, even partially, renounce the enjoyment or exercise of his/her civil rights.

563. Until its review in 1988, Swiss marriage law contained a series of gender-based inequalities of treatment *limiting the married woman's exercise of civil rights*. The review eliminated the husband's dominant position within the conjugal union (cf. also paras. 60 and 537 above). It also eliminated restrictions on the capacity of married women to conclude contracts and their inferior position in connection with the administration and enjoyment of property. For example, the prohibition to intercede whereby married women could not enter into an obligation towards a third party on behalf of their spouse has been deleted. The same applies to the conjugal union's representation before the courts; under the old law, the husband had to represent the wife in litigation with third parties concerning her property. Today, the capacity of men and women to go to court is unrestricted.

564. Under the reviewed Marriage Act, the new ordinary legal regime is applicable to all conjugal unions unless the spouses conclude a marriage contract that provides for a different regime (cf. paras. 596 ff below). Spouses married before the review under the ordinary "union of assets" regime are governed by the new ordinary regime of "participation in acquired assets" unless they submit in writing a joint declaration to the contrary (arts. 9b and 9e, Final Title, CCS). In its draft, the Federal Council had proposed that spouses married under the "union of assets" regime who had concluded a contract waiving only those legal provisions that relate to the apportionment of assets should, by virtue of the law, be governed by the new ordinary legal regime of participation in acquired assets, subject, however, to the waiver clause. Parliament rejected that solution, but gave the spouses one year in which to submit a declaration in writing undertaking to be governed by the "participation in acquired assets" regime (art. 10b, Final Title, CCS).

565. Thus, some married couples today are still governed by the old Marriage Act, including, in particular, its discriminatory provisions relating to the administration of property. In such cases it is the husband who administers the wife's property (cf. art. 200, para. 1, oCCS); for the rules governing enjoyment of property, see art. 201, para.1, oCCS). Under the old ordinary regime of union of assets, the husband administers the whole of the couple's property (art. 216, para.1 oCCS). The restrictions on the wife's capacity to go to court and the prohibition to intercede imposed by the old law do not, however, apply.

566. Switzerland's reservation to article 15 of the Convention thus continues to be justified. Its importance, however, is reduced by the fact that the number of married couples concerned is diminishing. Marriages contracted since 1988 are governed, without restriction, by the new Act.

B. Capacity to go to court

567. The review of the Marriage Act has rendered null and void the restrictions on married women's capacity to go to court. Women and men today have equal capacity to do so.

568. According to the rules established by the Federal Constitution, legislation in both civil and criminal law is the responsibility of the Confederation, while the

organization of the Judiciary, court procedure and the administration of justice in both civil and criminal matters are the responsibility of the cantons (articles 122 and 123 Cst). The standardization of different cantonal procedures is in preparation. But if cantonal procedural codes treated men and women differently, they would be contrary to the prohibition of discrimination anchored in the Federal Constitution. The cantonal procedural codes currently in force treat men and women equally, whether as plaintiffs or as accused persons, witnesses, defence counsel, judges or jurors. In all cantons, women must meet the same criteria as men in order to be called to the bar. They also enjoy formal equality of access to the profession of judge.

C. Freedom of movement, free choice of residence and domicile

Swiss women

569. Article 24 Cst gives Swiss citizens of both sexes the right to settle anywhere in the country, to leave Switzerland or to enter it. Since the entry into force of the new Marriage Act in 1988, this also applies to married women. Previously, the domicile of a married woman was inferred from that of the husband (art. 25, para.1, oCCS). Today, the spouses choose the common abode together (art. 162 CCS). Under article 175 CCS, a wife or a husband has the right to refuse to share the common abode if his/her personality or material security or the good of the family are seriously threatened.

Women aliens

570. With regard to aliens of both sexes, article 121 Cst provides that legislation on immigration, emigration, residence and domicile of aliens and on the granting of asylum are federal matters. Today's laws make practically no difference between the rights and duties of men and women foreigners, respectively.

571. Foreigners of both sexes who have entered Switzerland in a regular manner generally have the right to stay in the country for a maximum of three months without authorization from the Aliens Police on condition that they do not exercise a paid activity. The Aliens' Residence and Domicile Act (LSEE)[181] distinguishes between two Aliens Police authorizations allowing foreigners to stay in Switzerland: the residence authorization and the authorization of domicile. The treaty on free circulation of persons concluded with the European Union provides for other special forms of authorization for European Union nationals of both sexes.

572. The *residence authorization* (art. 5 LSEE) is limited in time; it can be extended and is valid only in the canton of issue. The ordinance limiting the number of foreigners[182] distinguishes between several forms of permit. Foreigners of both sexes admitted for a long-term stay receive a permit for one year, which can be extended. A seasonal permit allows the holder to stay in Switzerland for a maximum of 9 months, at the end of which he/she must leave the country for 3 months. "Seasonal worker" status will be abolished when the treaty on the free circulation of persons concluded with the European Community comes into force. Short-term residence permits are issued to foreigners of both sexes who come to Switzerland in

[181] Federal Act of 26 March 1931 on Residence and Domicile of Aliens (LSEE), RS 142.20.
[182] Ordinance of 6 October 1986 limiting the number of foreigners (OLE), RS 8223.21.

order to exercise a specific paid activity for a limited period (e.g. as an au pair girl, in adult education or as a cabaret dancer). With the exception of the last-named category, which was specially created for cabaret dancers, the provisions apply equally to women and men, although the wording of the legal provisions employs only the masculine form.

573. The *authorization of domicile* (art. 6 LSEE) was created for foreigners of both sexes who have elected permanent domicile in Switzerland. It is unlimited and unconditional. The authorities generally issue it after an uninterrupted stay of 10 years. By virtue of bilateral treaties, in the interests of reciprocity or in conformity with standing practice, Switzerland grants long-term residence permits after only 5 years to men and women nationals of the European Union, EFTA, the United States of America, Andorra, Monaco, San Marino and the Vatican. The reduced period also applies to spouses of Swiss nationals of either sex, as well as to spouses of foreign nationals of either sex domiciled in Switzerland (art. 7 SEE).

574. Statistics show that the sexes are variably represented in these different categories of authorizations.[183] There are slightly more men than women in possession of an authorization domicile. On the other hand, there are far fewer women among seasonal workers and asylum seekers. Women form the majority of holders of a yearly residence permit (55%). The proportion of men and women in each category of permit varies considerably depending on the country of origin. For example, women are in the majority among persons domiciled in Switzerland who originate from Central or South America, although women are under-represented overall in the domicile authorization category.

575. There are also no formal gender differences regarding *family reunification*. The foreign wife or husband of a Swiss national has the right to a residence authorization on condition that the marriage is legally valid. The authorization lapses if and when it becomes apparent that the spouses did not in fact intend to form a conjugal union and the marriage was contracted with the sole aim of circumventing the provisions of the Aliens Act. But since married couples are under no obligation to live together, a "white marriage" is extremely difficult to prove, especially as the Federal Supreme Court exercises great caution in the matter.[184] Similarly, the wife or husband of a holder of an authorization of domicile has the right to a residence permit; however, the spouses must be living under the same roof.

576. Unlike the foreign wife or husband of a Swiss national or of a holder of a domicile authorization, the wife or husband of a foreigner holding a yearly residence permit is not entitled to an authorization for the purpose of family reunification. Such authorization is, however, granted if it is evident that the yearly permit holder's stay and employment are of a lasting nature, that the family is going to live together and that suitable accommodation and the necessary resources for the maintenance and upbringing of the children are available.

577. The Federal Supreme Court has produced a large amount of case law on the question of family reunification as applied to Swiss nationals of both sexes as well as to foreigners of both sexes domiciled in Switzerland.[185] It is guided by principles

[183] Federal Statistical Office, La population étrangère en Suisse, Neuchâtel 2000.

[184] Cf. in this connection ATF 126 II 329, 123 II 52, 122 II 289.

[185] On this subject see e.g. Martina Caroni, Privat- und Familienleben zwischen Menschenrecht und Migration, Berlin 1999.

developed by organs of the European Convention on Human Rights on the basis of article 8 ECHR (right to private and family life).

578. In practice, the traditional distribution of roles means that there are many more men than women working in Switzerland who apply for family reunification. According to figures on the subject supplied by the Federal Statistical Office, 14,707 women and men came to join their spouse in Switzerland under family reunification procedures in 2000; this total included 10,845 women (73.7%) and 3,862 men (26.3%). Of the women who entered Switzerland, only 10.5% (1,140) began to work immediately upon arrival, as against 30.3% of the men (1,172).

579. In practice, foreign women who have married a Swiss husband and left behind their country's family structures to come to Switzerland face particular problems if the marriage is dissolved and their residence permit lapses. As already explained, foreign wives of Swiss nationals or of foreigners domiciled in Switzerland are entitled to an unlimited and unconditional domicile authorization of their own after five years. If a divorce takes place before the expiry of that period, the foreign woman is not entitled to her residence permit unless she holds it in her own right. If the woman is married to a foreigner holding a domicile authorization, the above rule applies already at the stage of separation. It is then up to the cantonal Aliens Police authorities to judge, within the framework of their discretionary powers, whether or not the residence permit can be extended.[186]

580. The parliamentary initiative on "Special rights for women migrants" submitted in 1996 calls for the introduction of autonomous residence and employment rights for migrant women irrespective of civil status. Pursuant to this initiative, the Political Institutions Committee of the National Council has been working on a partial review of the Federal Act on Residence and Domicile of Aliens. Under the resulting draft, the foreign wife or husband of a Swiss national and the wife or husband of a foreign holder of a domicile authorization would be entitled to obtain an extension of his/her residence permit after the dissolution of marriage if, in the light of her/his personal situation, he/she could not reasonably be ordered to leave Switzerland. The same possibility should also be open to foreign wives or husbands of foreign holders of a residence permit who cease to live together with their spouse or whose marriage is dissolved. The National Council approved this draft in June 1999, but in June 2001 the Council of States decided to set its consideration aside. The decision of both Chambers is still pending. The solution proposed by the Federal Council in its draft new aliens act, which should be submitted to Parliament early in 2002, corresponds in principle, where divorced spouses are concerned, to the solution envisaged by the National Council. During marriage, however, the Federal Council's draft, unlike that of the National Council, grants the right to obtain a residence permit and to have it extended only on condition that the spouses are living together.

581. Even where divorced foreign women do receive a residence permit, some of them have difficulty in managing on their own in Switzerland. This is true, in particular, of women who do not go out to work, are insufficiently or inadequately educated and have not yet become integrated in Swiss life. At the same time, their family generally does not want them to return to the country of origin and, if they do

[186] See in this connection ATF 126 II 265.

return, they usually find it more difficult than men to reintegrate economically and socially.

582. Persons who have obtained *refugee status* in Switzerland receive a residence authorization. After five years of regular residence they can claim an authorization of domicile, which gives them the right freely to choose their place of domicile in Switzerland. Persons who fail to meet the conditions for obtaining refugee status but whose return is not legally permissible, cannot be enforced or is not feasible, are *admitted to Switzerland on a provisional basis*. They are then subject to the same restrictions regarding domicile and access to the labour market as aliens holding a residence permit. Unlike persons having refugee status, asylum seekers of both sexes and persons admitted on a provisional basis do not enjoy family reunification rights.

Article 16 of the Convention – Elimination of discrimination in marriage and family matters

583. Over the past twenty years, article 8, paragraph 3 Cst, which mandates the lawmakers to ensure gender equality within the family, has occasioned several reviews of the Swiss Civil Code, the instrument that is decisive in the matter.

- An extensive review came into force in 1988. It concerned the effects of marriage in general, the matrimonial regime and the law of succession (see paras. 60 and 537 above and para. 586 below).
- New provisions standardizing and lowering full age and minimum marriageable age came into force in 1996.
- A new divorce law came into force in 2000. The changes relate, in particular, to grounds for divorce and to the economic consequences of divorce (see para. 65 above).

A. Entry into marriage (art. 16. para. 1 (a) of the Convention

584. Article 14 Cst sets forth the right to marry and to have a family. According to doctrine and case law, the freedom to enter into marriage is unconditional for both women and men.

585. Swiss marriage law applies the principles of monogamy, heterosexuality of the spouses and free consent of both spouses. It lists several conditions for the validity of a marriage:

- The future spouses must have reached full age, viz. 18 years for both sexes since 1996. This age limit tolerates no exception;
- The future spouses must be capable of discernment. The Federal Supreme Court has explained that the requirement must not be interpreted too restrictively so as not to create unwarranted hindrances to the right to marry;
- The future spouses must consent to the marriage. Prohibited persons must have the consent of their legal representative. It should be noted, however, that the right to marriage is strictly personal and does not, in principle, suffer representation. The person exercising guardianship duties can refuse consent only in the well-founded interest of the ward;

- There must be no legal obstacles to the marriage. The 2000 review limits such obstacles to close kinship (kinship in the direct line, kinship between brothers and sisters, kinship through fostering or adoption) and the existence of a previous marriage. It abolished the waiting period a woman previously had to observe before entering into a new marriage. The object of that rule was to resolve conflicts that could arise from the overlapping of two presumptions of paternity in the event of two consecutive marriages. But since under the new rules the new husband of a woman who remarries is presumed to be the father, the provision became redundant.

- Certain formalities must be observed (preparation procedure, celebration of marriage).

B. Freedom to choose a spouse and free consent to marriage (art. 16, para. 1 (b) of the Convention)

586. Swiss marriage law is based upon the principle of free and full consent of the future spouses. Several provisions of the marriage law, as well as the marriage procedure, are aimed at establishing this principle.

- The future spouses' capacity of discernment is a condition of marriage.

- The future spouses must present themselves together before the registrar in order to accomplish to preparatory procedure.

- The essential element of the celebration of marriage is the question the registrar addresses to each spouse in order to determine whether they consent to the marriage. If both reply in the affirmative, the marriage is declared concluded.

- The presence of two witnesses of full age and capable of discernment, as well as the public nature of the marriage ceremony, are also designed to ensure that the future spouses' consent is freely given.

587. A marriage contracted by a person incapable of discernment is declared null and void *ex officio* (arts. 105 ff CCS).

C. Absence of legal effects of the betrothal and the marriage of a child; registration of marriages (art. 16, para. 2 of the Convention)

588. The legal rules applicable to betrothal do not set a minimum age for betrothal. Article 90, paragraph 2 CCS merely stipulates that a promise of marriage is not binding upon minors or prohibited persons without their legal representative's consent. Paragraph 3 of the same article specifies that betrothal does not constitute grounds for the right to marry. The legal effects of betrothal are confined to a right to demand the restitution of gifts or a financial contribution towards any costs incurred (arts. 91 and 92 CCS).

589. Women and men can enter into marriage from the age of 18 years. No exception is provided (art. 94, para.1 CCS). One of the conditions the registrar must check before proceeding to celebrate the marriage is that both spouses have reached the minimum marriageable age.

590. Article 39 CCS provides that civil status shall be recorded in registers, and in particular in a register of marriages. The Federal Ordinance on Civil Status[187] mandates cantonal registries to celebrate marriages and to keep a marriage register in which marriages and divorces are recorded.

D. Rights and duties during marriage and in the event of its dissolution (art. 16, para.1 (c), (e) and (h) of the Convention)

Rights and duties during marriage

591. Since the review of the Marriage Acct in 1988, partnership within the couple has become the new paradigm of the institution of marriage in Switzerland. The patriarchal principle making the husband the supreme head and chief decision-maker of the family has been abolished (see paras. 60 and 129 above).

592. This change of paradigm is reflected, in particular, in the following provisions: the spouses undertake mutually to work towards the prosperity of the family and to provide together for the maintenance and upbringing of the children (art. 159 CCS). They choose the family abode together (art. 162 CCS). Husband and wife contribute, each according to his/her capacity, towards the maintenance of the family and agree between themselves on the way in which each shall make his/her contribution (financial contribution, household duties, care of children, helping the spouse in his/her work or enterprise, art. 163 CCS). In doing so, they take into account the needs of the conjugal union and their personal situation (art. 167 CCS). While living together, each spouse represents the conjugal union for the ordinary purposes of the family (art. 166 CSS).

593. Men and women still have different status as regards the family name and the acquisition of cantonal and communal domicile rights (for the rules governing the family name and Switzerland's reservation relating thereto, see para. 609 below). On entering marriage, the wife (and only she) receives the cantonal and communal domicile rights of the husband without losing those she held before marriage (art. 161 CCS). According to the Federal Supreme Court, the law as it is at present contravenes the principle of gender equality.[188] A review of this provision aimed at placing the spouses on an equal footing was rejected by Parliament in June 2001, principally because of the rules proposed in the event of disagreement between the spouses concerning the choice of the children's family name (see paras. 23 above and 610 below).

594. Swiss marriage law contains no provision relating to the right to decide on the number and spacing of children (see art. 16, para. 1 (e) of the Convention). The institution of marriage being viewed as a partnership, the decision is, in principle, taken by the spouses together (as regards access to information on procreation, means of contraception and family planning, see para. 458 above relating to article 12).

595. The 1988 review introduced equality in all essentials regarding the property status of married women (see art. 16, para. 1 (h) of the Convention). Before 1987, the ordinary matrimonial regime of union of assets had been characterised by the husband's dominant status and the wife's position of wardship, but these inequalities

[187] Ordinance on Civil Status of 1 June 1953 (OEC), RS 211.112.1.
[188] ATF 125 III 209 ff.

were eliminated in 1988. The ordinary regime of participation in acquired assets distinguishes between acquired assets and those belonging separately to each spouse. Acquired assets include payments received by the husband or wife during marriage, essentially earnings or benefits received from personal and social savings institutions and social insurance (art. 197 CCS). Personal assets are effects that serve entirely for the personal use of one of the spouses and assets held by him/her at the beginning of the marriage or subsequently received through inheritance or otherwise by way of unearned income (art. 198 CCS). The spouses can also agree by marriage contract that certain assets defined by law shall not form part of acquired assets but of personal assets (art. 199 CSS). During marriage, each spouse administers his/her acquired and personal assets (art. 201 CCS).

596. As explained earlier, some conjugal unions are still governed by the old rules relating to the matrimonial regime and, in particular, by discriminatory rules concerning the administration of property. In that case, it is, in principle, the husband who administers the wife's property (see art. 200, para. 1 oCCS; concerning the rules relating to the enjoyment of property, see article 201, para. 1 oCCS). In conjugal unions governed by the old law, the husband also administers assets held in common (art. 216, para. 1 oCCS). On that subject and on Switzerland's reservation to article 15, para. 2 of the Convention, see paras. 565 ff of this report relating to article 15.

Legal effects in respect of property in the event of dissolution of marriage

597. In contrast to the old law, the new rules in force since 1988 ensure equality of rights between the sexes. When a marriage is dissolved through divorce or death of one of the partners, the personal property of the spouses is separated from their acquired assets. After various corrections and upon deduction of outstanding debts, the remainder of the acquired assets constitutes the sum due. The surviving spouse and other persons entitled to the deceased spouse's property each have the right to one-half of the sum due to the other (art. 215 CCS), unless the spouses have provided for a different apportionment of the sum due (art. 216 CCS).

Dissolution of marriage through divorce

598. The most recent review of Swiss family law relates to divorce and, in particular, to the economic consequences of divorce. The rules concerning employee insurance and maintenance after divorce have been amended. Gender and the existence or non-existence of wrongdoing no longer play any role whatever in this field. While the old law did not, strictly speaking, contain discriminatory provisions, the persistence of traditional gender stereotyping in society often meant that divorce in fact had the consequence of disadvantaging the spouse who had kept house and brought up the children, i.e. in most cases the wife. The most important of the new rules provides that benefits received during marriage from an employee insurance institution shall be halved between the spouses irrespective of the matrimonial regime, any decision concerning alimony, and the grounds for the divorce (arts. 122 and 123 CCS). If benefits cannot be shared because one of the spouses has already begun to draw the employee insurance pension as a result of retirement or disablement, equitable compensation is due; it may take the form of transfer of a

part of the employee insurance benefits (art. 124 CCS; art. 22, para. 1 of the Free Transfer Act).[189]

599. The conditions for alimony are gender-neutral and, in principle, independent of the existence or non-existence of wrongdoing. If a spouse cannot reasonably be expected to make suitable provision for his/her own maintenance, including the constitution of an appropriate old-age pension, the other spouse must make an equitable contribution (art. 125, para. 1 CCS). Alimony conditions depend on objective criteria, such as the distribution of duties during marriage, the length of the marriage, the spouses' standard of living during marriage, their age and state of health, the number of children and the length of time still needed to bring them up, the spouses' educational level and earning prospects, the probable cost of the alimony recipient's integration in the labour market and the anticipated AVS, employee insurance and private insurance pensions (art. 125, para. 2 CCS). Entitlement to alimony is limited by a saving clause to prevent abuses in the event of serious wrongdoing (art. 125, para. 3 CCS).

600. The new divorce law no longer contains provisions that discriminate against women. The possibility cannot be ruled out, however, that the economic interests of the spouse who has kept house and take care of children will be more seriously affected because of the difficulties she will meet in trying to return to work. In an adverse economic environment, it is in fact mostly women (who account for two-thirds of persons not in paid employment) that meet such difficulties. In its draft of a new Divorce Act, the Federal Council had proposed a "divorce pension" that would, in principle, have lapsed automatically in the event of the entitled spouse's remarriage; the entitled spouse would, however, have had 6 months to apply to the courts for payment of all or part of the pension to facilitate her/his return to work or care of children. But Parliament rejected that proposal. The new law provides that, in the absence of agreement to the contrary, the obligation to pay alimony shall lapse upon the recipient spouse's remarriage (art. 130, para. 2 CCS).

601. According to the case law of the Federal Supreme Court, the alimony obligation may not, in principle, cut into the minimum living resources of the person from whom it is due. If, at the time the amount of alimony and/or maintenance is determined, the divorced spouses' income is insufficient, the entitled persons (generally the wife and children) must make up the difference; sometimes they are obliged to resort to social assistance or to incur debts. Social assistance benefits paid to the wife are, in principle, reimbursable if her economic situation improves.

Dissolution of marriage through death of one of the spouses

602. Before 1988, Swiss law in matters of succession was based on the principle of vertical devolution, i.e. the children and other blood relations were the first beneficiaries. The new law establishing partnership between the spouses continues to apply after the death of one of the spouses (cf. arts. 457 ff CCS).

603. In the absence of a testament, the surviving spouse is, since 1988, entitled to one-half of the succession if there is contest on the part of the direct descendants. In the case of contest on the part of the deceased spouse's father or mother or their

[189] Federal Act of 17 December 1993 on Freedom of Transfer in Employee Old-Age, Surivors' and Disablement Insurance (Free Transfer Act, LFLP), RS 831.42.

offspring, the surviving spouse receives three-quarters of the succession. In all other cases, the surviving spouse is entitled to the whole of the succession (art. 462 CCS).

E. Rights and duties in relation to children (art. 16, para. 1 (d) and (e) of the Convention)

604. During marriage, the father and mother exercise parental authority jointly (art. 297 CCS). They provide jointly for the maintenance and upbringing/education of their children (art. 159 CCS). A provision establishing the husband's preponderance in the event of disagreement was abolished in 1976.

605. Parents who are married are subject to two discriminatory provisions. These relate to the family name and to domicile rights. The child of married parents acquires the family name, which is normally that of the father (art. 160, para. 1 CCS; cf. para. 609 below). The child also acquires the father's cantonal and communal domicile rights (art. 271, para.1 CCS; concerning gender differences in the acquisition of cantonal and communal domicile rights on marriage, see paras. 23 and 593 above).

606. The new Divorce Act is gender-neutral in the matter of child custody. The courts' practice of entrusting custody to the mother in the majority of cases (in a ratio of 9 to 1), which has remained relatively constant over the years, is not discriminatory against men but a consequence of the de facto situation. Article 133 CCS now provides that the judge shall attribute parental authority to one of the parents and shall determine the personal relations between the child and the other parent as well as the maintenance contribution due from the latter. If the parents jointly so request and if they submit an agreement defining their respective participations in the child's care and upkeep, the judge shall maintain joint exercise of parental authority provided that it is compatible with the child's best interest.

607. Where *parents are not married to each other*, parental authority is vested in the mother (art. 298, para.1 CCS). This inequality of treatment reflects the de facto situation, it being generally the mother that takes care of the children. The provision is therefore compatible with the child's best interest in the majority of cases. The law in force provides that parents who are not married to each other may, like divorced parents, jointly request the guardianship authority of the child's canton of domicile to grant them joint parental authority (art. 298a, para. 1 CCS).

F. Guardianship and trusteeship (art. 16, para. 1 (f) of the Convention

608. The law on guardianship contains no gender inequalities and its provisions are not based on the gender of the protected person or other persons concerned. A gender inequality was eliminated in the reviewed version of 2000, when the provision in article 382, para. 1 oCCS whereby the obligation to accept guardianship or trusteeship (by virtue of the note to art. 397, para.1 CCS) was limited to the minor's or prohibited person's male relatives, husband and all other persons of male sex living in the district was extended to women (art. 383, para. 1 CCS).

G. Choice of family name (art. 16, para. 1 (g) of the Convention)

609. Under the new Marriage Act of 1988, two legal consequences - the family name and cantonal and communal domicile rights – are still, as an exception,

governed by the criterion of gender (concerning the right of domicile, see paras. 223, 60 ff, 593 and 605 above). On these points equality has not yet been achieved.

610. The *family name* of the spouses is the name of the husband (art. 160, para. 1 CCS). Changes of name "for good reason" are generally authorized.[190] Furthermore, future spouses can, claiming legitimate interests, request to bear the wife's name as the family name upon entering marriage (art. 30, para. 2 CCS). This procedure is free of charge. If the family name is that of the husband, the future wife can declare to the registrar on the day of the marriage that she wishes to have the family name preceded by her maiden name (art. 160, para. 2 CCS). If the maiden name already consists of two names, only the first may precede the new family name (art. 160, para. 3 CCS). Pursuant to the Burghartz decision of the European Court of Human Rights,[191] the Ordinance on Civil Status was reviewed in 1994 and the rules on the spouses' family name are today applied gender-neutrally in all essentials. Thus, the procedure of registering the wife's name as the family name is free of charge.[192] Moreover, in cases where the spouses choose the wife's name as the family name, the husband also has the right to have the family name preceded by his own family name. A review of these provisions aimed at introducing gender equality as regards the family name and domicile rights was rejected in Parliament in June 2001. Switzerland must therefore maintain, until further notice, the reservation on the subject of the family name it lodged when ratifying the Convention (see also paras. 23 and 593).

[190] The recent practice of the Federal Supreme Court is illustrated e.g. by the following decisions: ATF 124 III 402; 121 III 145; 120 00 277.

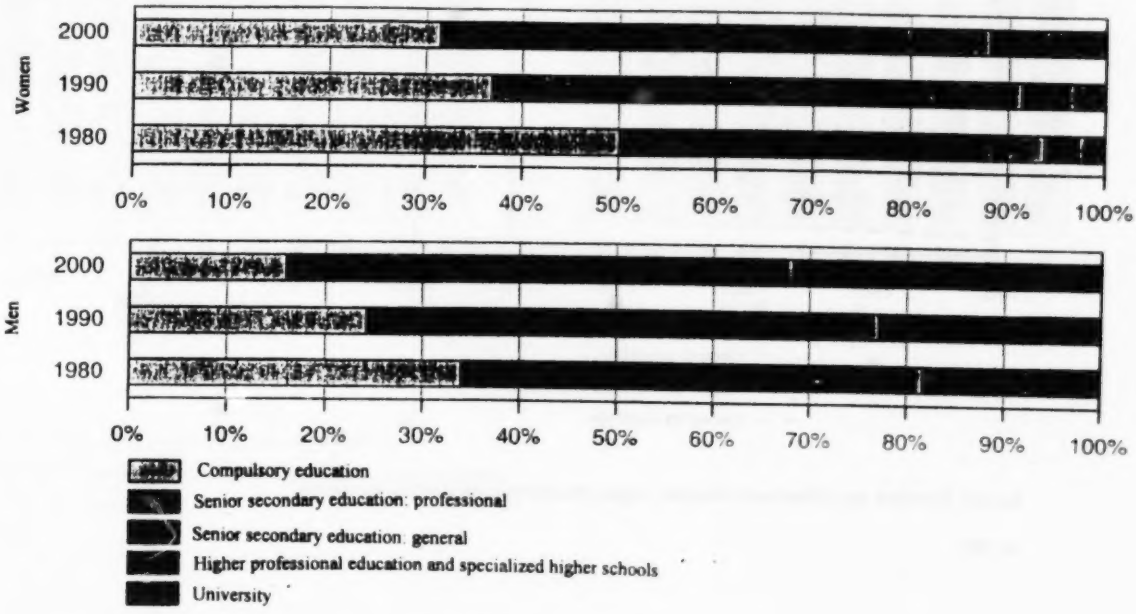
[191] Decision of the European Court of Human Rights of 22 February 1994 in the case of Burghartz v./Switzerland, series A, No. 280-B.

[192] ATF 126 I 1.

Annex I

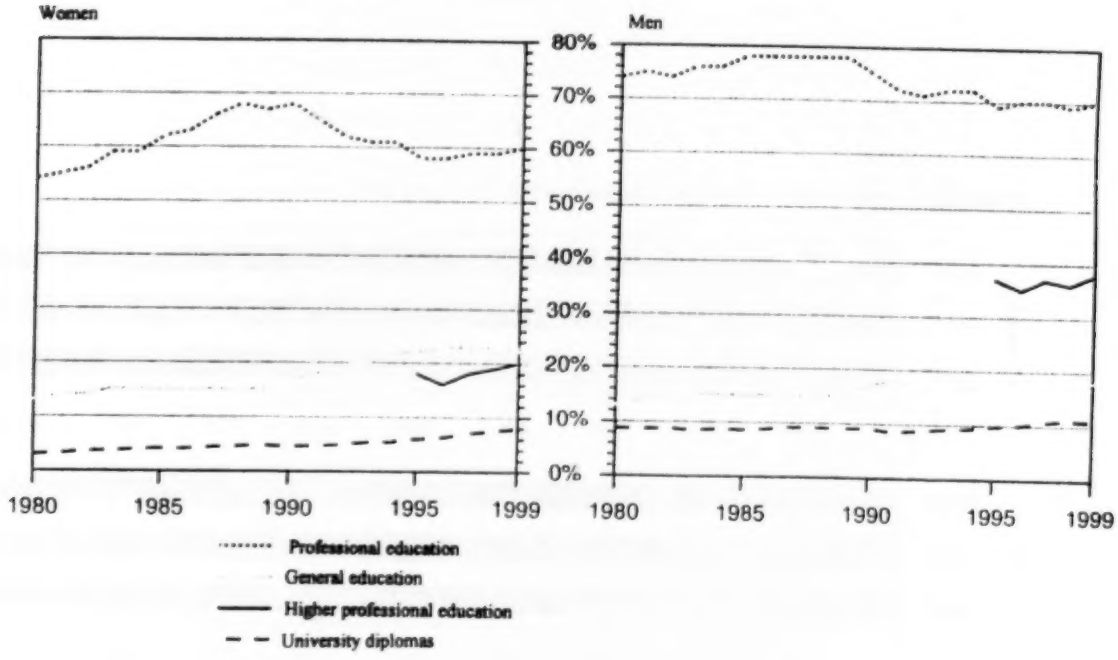
Indicators relating to the principal areas of life

Educational level of the resident population in 1980, 1990 and 2000: persons aged 25 to 64



Source: Federal population census, 1980 and 1990; survey of population of working-age (ESPA), 2000
© Swiss Federal Statistical Office (OFS)

Diplomas issued at various levels, 1980–1999



Source: Schooling and professional education – higher educational establishments and science

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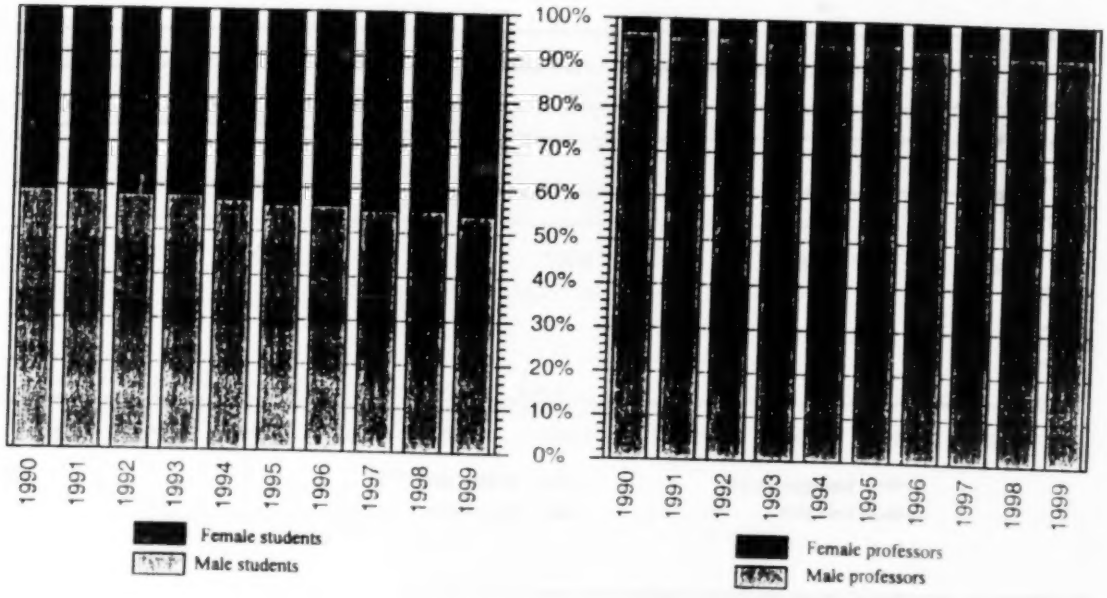
Students* and professors: breakdown by gender, per cent, 1990–1999**



Source: Swiss Universities Information System (SIUS)

*Undergraduates (not including post-graduate and doctoral students)

**Full-time equivalents

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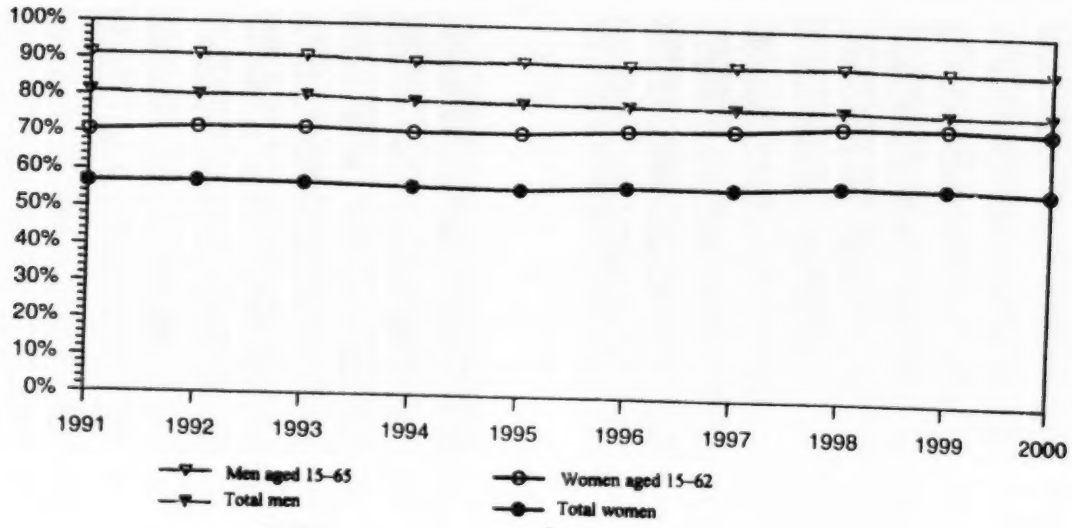
Employment rate, 1991–2000

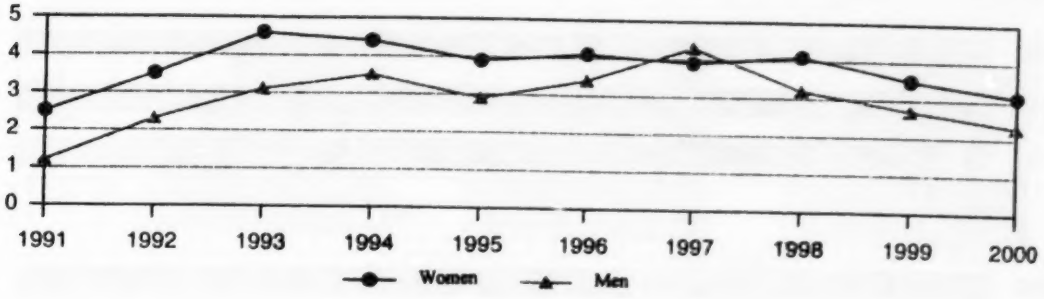


Employment rate: proportion of persons employed or registered as unemployed in the total population aged 15 and over

Source: ESPA

© OFS

Unemployment rate, 1991–2000

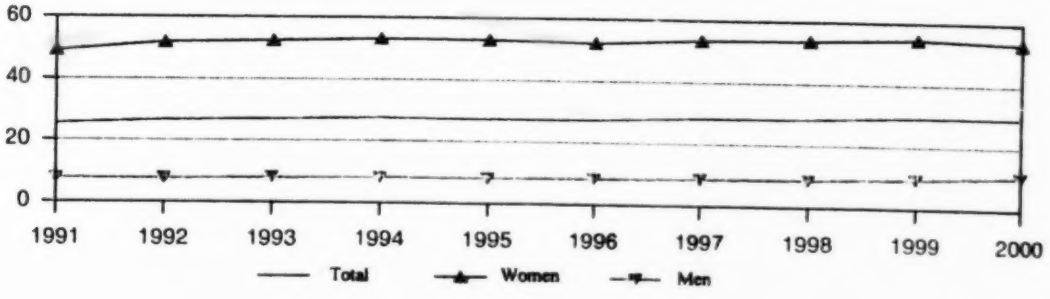


Unemployment rate: proportion of out-of-work persons among active persons (employed or registered as unemployed) in the total population aged 15 and over

Source: ESPA

© OFS

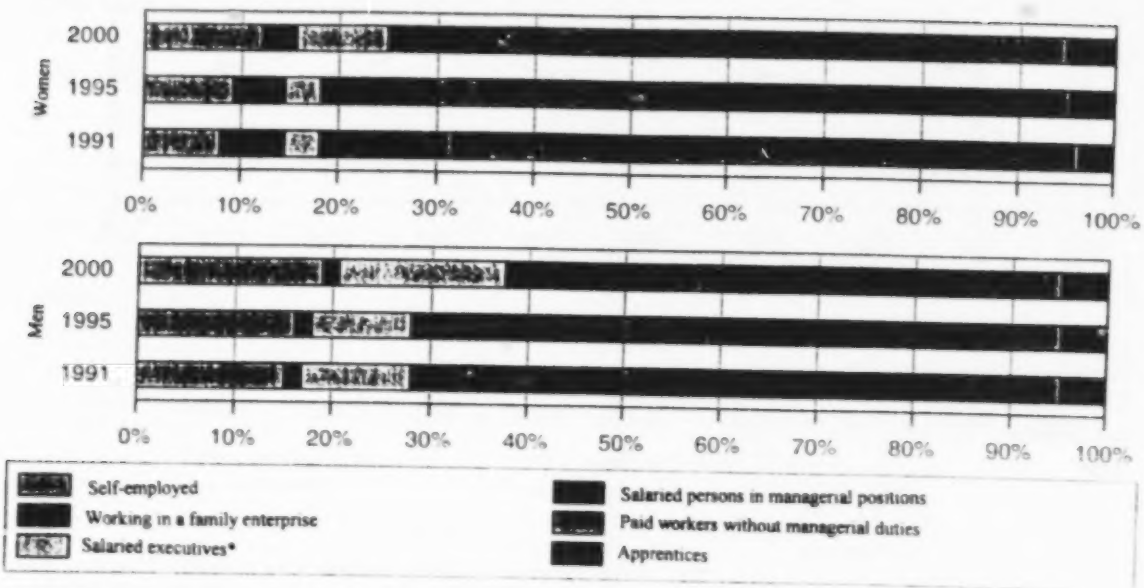
Part-time working rate, per cent of working-age population, 1991–2000



Source: ESPA

© OFS

Employment situation, per cent, in 1991, 1995 and 2000



Source: ESPA

* Owing to a modification of the questionnaire in 1996, the 1991 and 2000 results in this category are not directly comparable. After 1996, the question "*In your job, are you part of the management of your enterprise, or does your job involve similar responsibilities?*" was addressed to all salary/wage earners, whereas previously only salaried persons in managerial positions had been taken into consideration.

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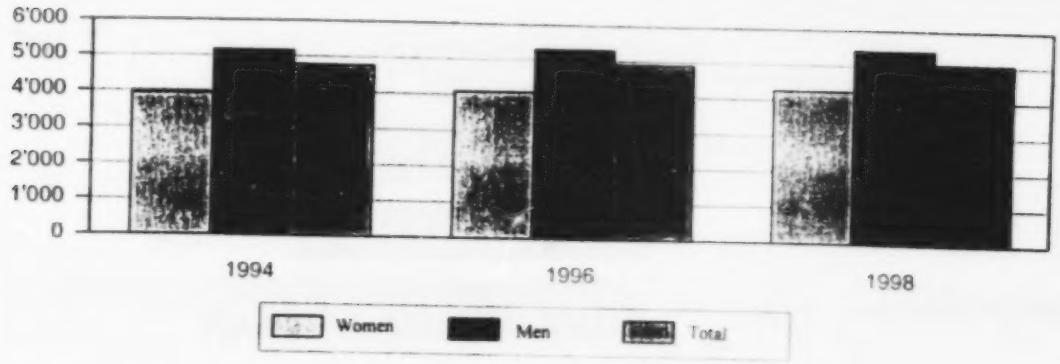
Standardized (median) gross monthly pay: private sector, 1994, 1996, 1998



For purposes of measuring the standardized gross pay, part-time posts are converted into full-time posts on the basis of 4 1/3 weeks at 40 hours of work per week.

The median divides the group under consideration into two halves, pay is above the standardized gross monthly figure for one-half of wage-earning persons and below it for the other half.

Source: Swiss survey on the structure of wages

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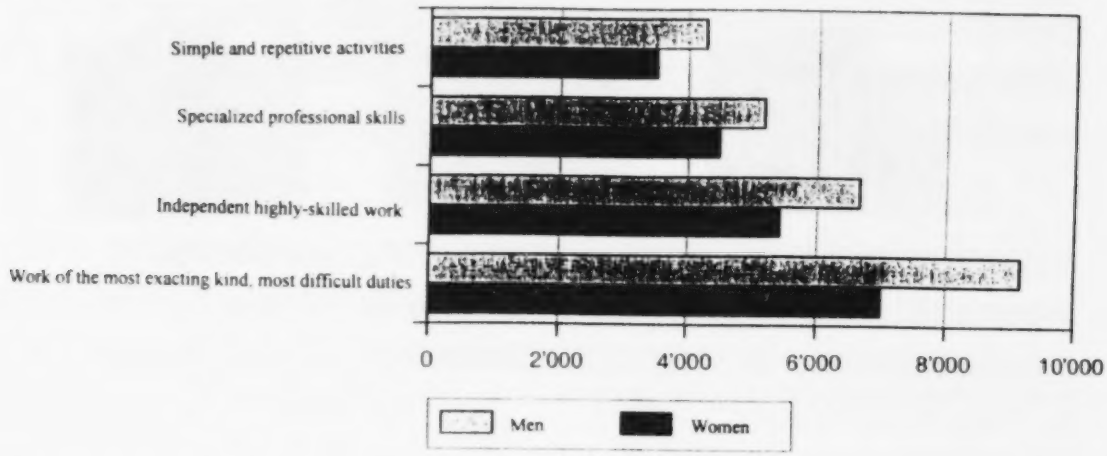
Pay in relation to the qualifications required for the post (median), private sector, in 1998



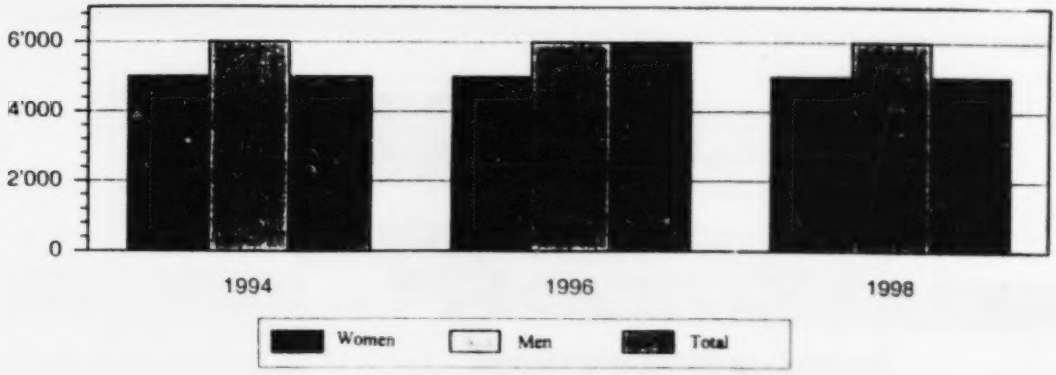
For purposes of measuring the standardized gross pay, part-time posts are converted into full-time posts on the basis of 4 1/3 weeks at 40 hours of work per week.

The median divides the group under consideration into two halves; pay is above the standardized gross monthly figure for one-half of wage-earning persons and below it for the other half.

Source: Swiss survey on the structure of wages

© OFS

Standardized gross monthly pay (median), public sector (Federal administration), 1994, 1996, 1998



For purposes of measuring the standardized gross pay, part-time posts are converted into full-time posts on the basis of 4 1/3 weeks at 40 hours of work per week.

The median divides the group under consideration into two halves, pay is above the standardized gross monthly figure for one-half of wage-earning persons and below it for the other half.

Source: Swiss survey on the structure of wages

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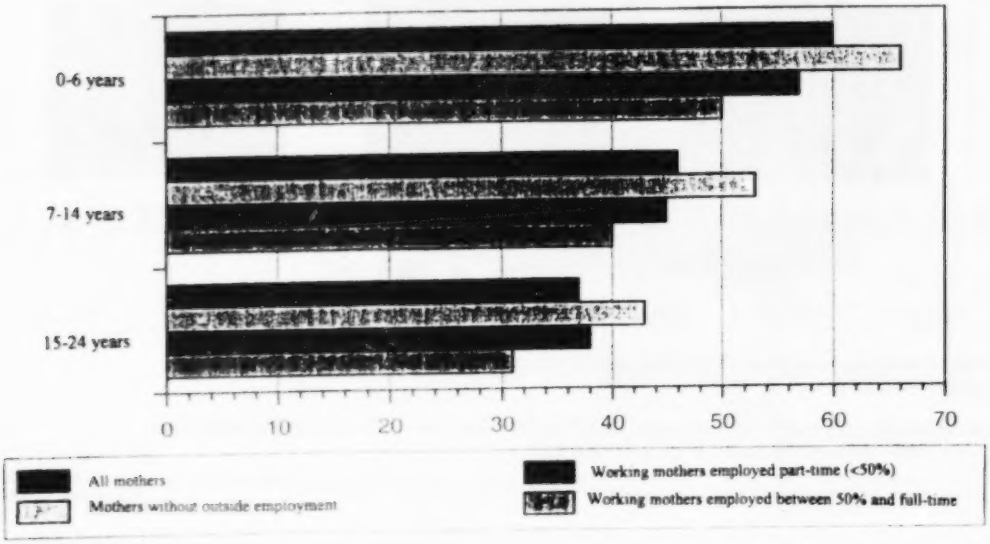
Mothers of families

Average weekly number of hours spent on household and family duties, by age of youngest child and mother's employment situation, 2000

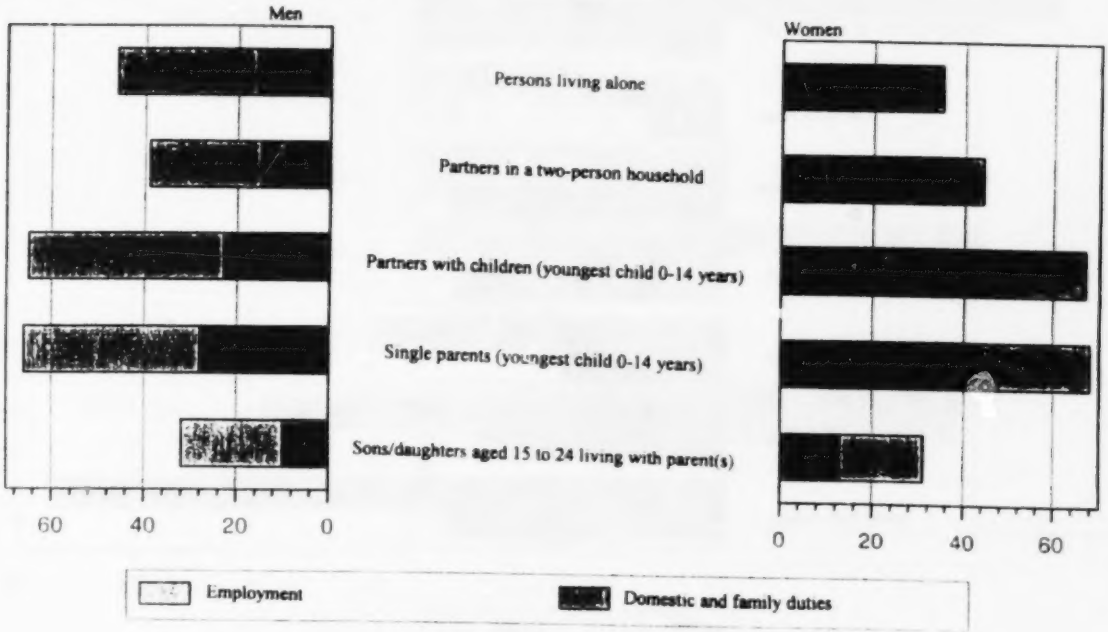


Source ESPA, Unpaid work

© OFS

Total workload

Average weekly number of hours spent in employment and on domestic/family duties



Source: ESPA, Unpaid work

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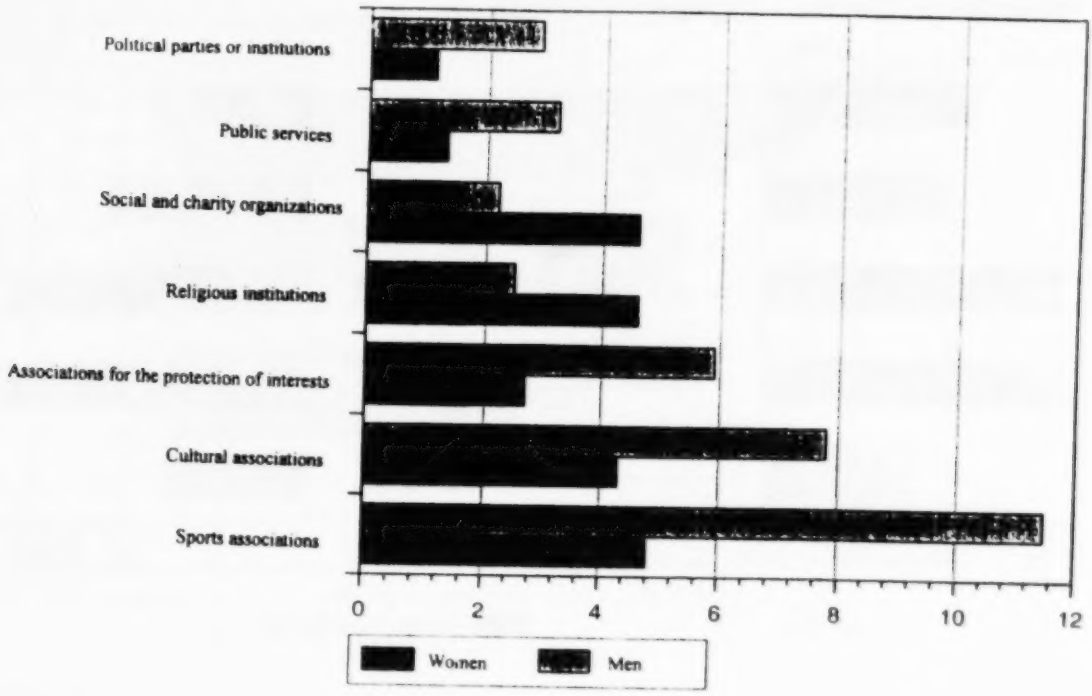
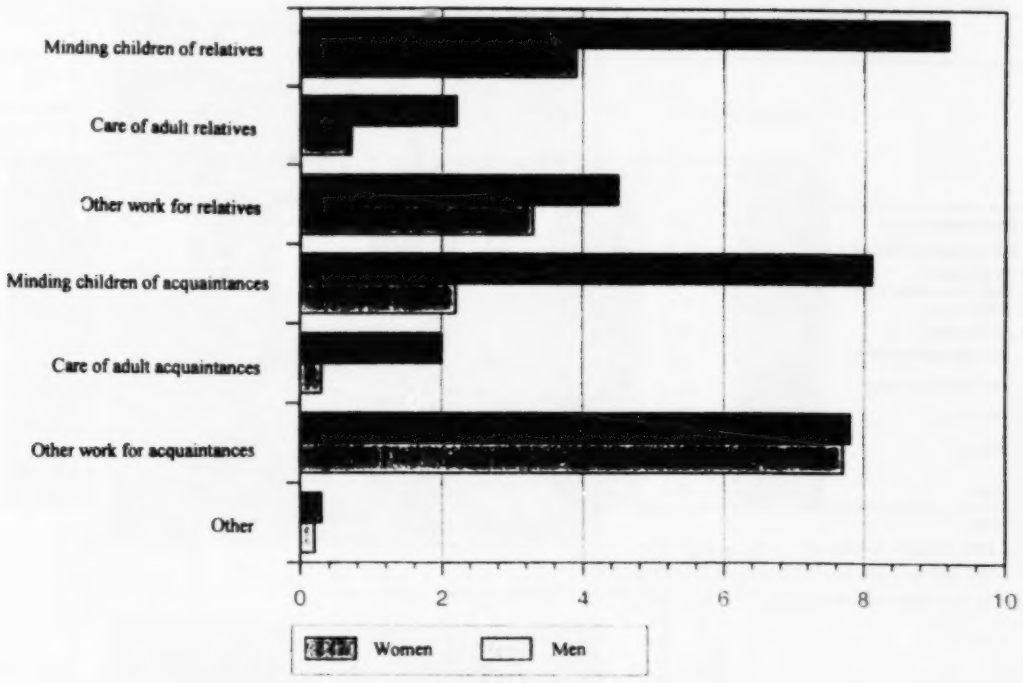
Participation in organized voluntary work, per cent of resident population, 2000



Source ESPA, Unpaid work

©OFS

Participation in informal voluntary work, per cent of resident population, 2000



Source: ESPA, Unpaid work

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Women in political institutions, by political party

Status as of 1 January 2001 and comparison with 1997

Party	Communal governments		Cantonal governments		Cantonal parliaments[3]		National Council		Council of States	
	2001	1997	2001	1997	2001	1997	2001	1997	2001	1997
PRD (Radical Party)	18.5	15.4	[illegible]	18.4	[illegible]	18.0	[illegible]	15.9	[illegible]	29.4
PDC (Christian Democrats)	23.5	21.4	[illegible]	8.8	[illegible]	15.7	22.9	14.7	[illegible]	6.3
PS (Socialists)	[illegible]	31.8	[illegible]	19.4	[illegible]	42.1	39.2	35.2	[illegible]	20.0
UDC (Democratic Party of the Centre)	[illegible]	15.7	[illegible]	15.4	[illegible]	9.7	[illegible]	10.0	[illegible]	0.0
LP (Liberals)	22.7	13.6	[illegible]	14.3	[illegible]	23.4	[illegible]	14.3	[illegible]	0.0
PEV (Evangelical Party)	[illegible]	9.5	[illegible]	[illegible]	[illegible]	21.4	[illegible]	0.0	[illegible]	[illegible]
PST (Workers' Party) [1]	[illegible]	28.6	[illegible]	0.0	[illegible]	45.5	[illegible]	33.3	[illegible]	[illegible]
The Greens [2]	[illegible]	43.8	[illegible]	33.3	[illegible]	50.7	[illegible]	60.0	[illegible]	[illegible]
Others	[illegible]	30.5	[illegible]	0.0	[illegible]	15.9	[illegible]	6.3	[illegible]	*100.0**
Total	[illegible]	22.2	[illegible]	14.6	[illegible]	23.2	[illegible]	21.5	[illegible]	17.4

Notes

[1] PST includes SolidaritéS, Alliance of the Left

[2] The Greens includes PE (Ecological Party and AVF)

[3] Not including the two Appenzells, where seats are not awarded on a party basis

* N = 1

Women's representation at communal, cantonal and national levels

Status as of 1 January 2001 and comparison with 1997

	Governments		Parliaments		1997
	Men		Men		Proportion of women
Confederation					
Federal Council	5				14.3%
National Council			154		21.5%
Council of States			37		17.4%
Canton					
Cantonal governments	132				14.6%
Cantonal parliaments			2'204		23.2%
Communes of more than 10,000 inhabitants					
Communal governments	663				22.2%
Communal parliaments[1]			2'935		28.0%

Note

[1] Status as of June 1966 and June 2000, respectively

Sources: Federal Statistical Office; Institute of Political Sciences, Berne; Union of Swiss Cities

Annex II

List of main legislative acts

RS 101.	Federal Constitution of the Swiss Confederation of 18 April 1999 (Cst)
RS 141.0	Federal Act of 29 September 1952 on the acquisition and loss of nationality (Nationality Act, LN)
RS 142.20	Federal Act of 26 March 1931 on residence and domicile of aliens (Aliens Act, LSEE)
RS 142.31	Asylum Act of 26 June 1998 (Lasi)
RS 151.1	Federal Act of 24 March 1995 on equality between women and men (Equality Act, LEg)
RS 201	Swiss Civil Code of 10 December 1907 (CC)
RS 220	Federal Act of 30 March 1911 supplementing the Swiss Civil Code (Book Five: Law of Obligations, CO)
RS 311	Swiss Penal Code of 21 December 1937 (CP)
RS 412.10	Federal Act of 19 April 1978 on professional education (LFPr)
RS 421.01	Federal Statistics Act of 9 October 1992 (LSF)
RS 510.10	Federal Act of 3 February 1995 on the army and military administration (Army Act, LAAM)
RS 822.11	Federal Act of 13 March 1964 on work in industry, crafts and commerce (Labour Act)
RS 831.10	Federal Act of 20 December 1946 on old-age and surviving relatives' insurance (LAVS)
RS 831.20	Federal Act of 19 June 1959 on disablement insurance (LAI)
RS 831.40	Federal Act of 25 June 1982 on employee old-age, surviving relatives' and disablement insurance (LPP)
RS 831.42	Federal Act of 17 December 1993 on free transfer in employee old-age, surviving relatives' and disablement insurance (LFLP)
RS 832.10	Federal Act of 18 March 1994 on health insurance (Health Insurance Act, LAMal)
RS 832.20	Federal Act of 20 March 1981 on accident insurance (Accident Insurance Act, LAA)
RS 837.0	Federal Act of 25 June 1982 on compulsory unemployment insurance and compensation in the event of insolvency (Unemployment Insurance Act, LACI)